
No. 126956

**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

In The Matter of the Estate of:)	On leave to appeal from the
)	Appellate Court of Illinois, Second
JOHN W. MCDONALD, III)	District, No. 2-19-1113
)	
Deceased.)	There on Appeal from the Circuit
)	Court of the Sixteenth Judicial
SHAWN MCDONALD,)	Circuit, Kane County, Illinois,
)	No. 17-P-744
Appellant,)	
)	
v.)	
)	
ELLIZZETTE MCDONALD,)	Date of Judgment: March 2, 2020
)	
Appellee.)	

**BRIEF AND APPENDIX OF
APPELLANT, SHAWN MCDONALD**

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TABLE OF CONTENTS

POINTS AND AUTHORITIES	ii
NATURE OF THE ACTION	1
ISSUES PRESENTED FOR REVIEW.	3
STATEMENT OF JURISDICTION.	3
STATEMENT OF FACTS.	4
STANDARDS OF REVIEW	13
ARGUMENT	14
I. THE VIGILANT PROTECTION WARDS ARE ENTITLED TO INCLUDES REQUIRING A COURT TO DETERMINE WHETHER IT IS IN THE WARD’S BEST INTEREST TO MARRY.	14
II. THE APPELLATE COURT DECISION FAILED TO ACKNOWLEDGE ELLIZZETTE NEVER ESTABLISHED HER ACTUAL IDENTITY THROUGHOUT THE TRIAL PROCEEDINGS.	19
III. ILLINOIS RULE OF EVIDENCE 101 WAS ABROGATED WHEN THE APPELLATE COURT PERMITTED THE LEGISLATURE’S AMENDMENT TO THE DEAD MAN’S ACT TO USURP THE SUPREME COURT’S DECISION IN <i>LAURENCE V.</i> <i>LAURENCE</i> , 164 ILL. 367 (1896).	22
CONCLUSION	26
APPENDIX	A

POINTS AND AUTHORITIES**STANDARD OF REVIEW**

735 ILCS 5/2-1110	13
<i>In re Estate of Goffinet</i> , 318 Ill.App.3d 152 (4th Dist. 2001)	13
<i>Kokinis v. Kotrich</i> , 81 Ill.2d 151 (1980).	13
<i>People v. \$5,608 U.S. Currency</i> , 359 Ill.App.3d 891 (2nd Dist. 2005)	13
<i>People, ex rel. Sherman v. Cryns</i> , 203 Ill.2d 264 (2003).	13

ARGUMENT**I. THE VIGILANT PROTECTION WARDS ARE ENTITLED TO INCLUDES REQUIRING A COURT TO DETERMINE WHETHER IT IS IN THE WARD'S BEST INTEREST TO MARRY.**

750 ILCS 5/102(2)	18
755 ILCS 5/11a-18	17
755 ILCS 5/11a-22	17
755 ILCS 5/11a-17(a-10)	16-18
755 ILCS 5/11a-17(e).	17
755 ILCS 5/11a-3 (b)	14
<i>In re Estate of Greenspan</i> , 137 Ill.2d 1 (1990).	15
<i>In re Estate of K.E.J.</i> , 382 Ill.App.3d 401 (2008)	15
<i>In re Estate of Longeway</i> , 133 Ill.2d 33 (1989)	15
<i>In re Estate of McDonald</i> , 2020 IL App (2d) 191113	16, 22
<i>In re Mark W.</i> , 228 Ill.2d 365 (2008)	14
<i>In re Marriage of Drews</i> , 115 Ill.2d 201 (1986)	14, 15
<i>Karbin v Karbin, ex rel. Hibler</i> , 2012 IL 112815	14-18
<i>Matter of Larimore's Estate</i> , 64 Ill.App.3d 470 (3rd Dist. 1978)	16
<i>Nelson v Artley</i> , 2015 IL 118058	16
<i>Pike v. Pike</i> , 112 Ill.App. 243 (1st Dist. 1904)	17
<i>Rushton v. Department of Corrections</i> , 2019 IL 124992, ¶14	16

II. THE APPELLATE COURT DECISION FAILED TO ACKNOWLEDGE ELLIZZETTE NEVER ESTABLISHED HER ACTUAL IDENTITY THROUGHOUT THE TRIAL PROCEEDINGS.

750 ILCS 5/102(2)	21
Black's Law Dictionary 1330 (9th Ed. 2009).	19
<i>George v. Moorhead</i> , 399 Ill. 497 (1942)	19
<i>In re Estate of Severson</i> , 107 Ill.App.3d 634 (2nd Dist. 1982)	19
<i>In re Estate of Wellman</i> , 174 Ill.2d 335 (1996)	21
<i>Kokinis v. Kotrich</i> , 81 Ill.2d 151 (1980).	19, 21
<i>Muller v. Zollar</i> , 267 Ill.App.3d 339 (3rd Dist. 1999).	20

III. ILLINOIS RULE OF EVIDENCE 101 WAS ABROGATED WHEN THE APPELLATE COURT PERMITTED THE LEGISLATURE'S AMENDMENT TO THE DEAD MAN'S ACT TO USURP THE SUPREME COURT'S DECISION IN *LAURENCE V. LAURENCE*, 164 ILL. 367 (1896).

735 ILCS 5/8-201(d)	22
755 ILCS 5/11a-17(a-10)	25
<i>Balma v. Henry</i> , 404 Ill.App.3d 233 (2nd Dist. 2010)	23
<i>Colella v. JMS Trucking Company of Illinois, Inc.</i> , 403 Ill. App. 3d 82 (1st Dist. 2010).	24
<i>Gunn v. Sobucki</i> , 216 Ill.2d 602 (2005)	23
Illinois Rule of Evidence 101	22, 25
<i>In re Diak's Estate</i> , 70 Ill.App.2d 1 (1st Dist. 1966)	23
<i>In re Estate of Bailey</i> , 97 Ill.App.3d 781 (1981)	22-25
<i>In re Estate of Hutchins</i> , 120 Ill.App.3d 1084 (1984)	22, 25
<i>In re Maher's Estate</i> , 210 Ill. 160 (1904).	23
<i>Laurence v. Laurence</i> , 164 Ill. 367 (1896)	22, 23, 25
<i>People v. Adams</i> , 318 Ill.App.3d 539 (2nd Dist. 2001)	25
<i>Pyramid Development, LLC v. Dukane Precast, Inc.</i> , 2014 IL App (2nd) 131131, ¶41.	25

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BRIEF AND ARGUMENT OF APPELLANT, SHAWN MCDONALD

NATURE OF THE ACTION

Shawn McDonald ("Shawn") is the Administrator of his brother, John W. McDonald, III's ("John") Estate. Prior to serving as Administrator, Shawn was appointed John's plenary guardian following a contested guardianship proceeding held on May 30, 2017 in Kane County, Illinois. Shawn continuously served as plenary guardian up until John's death on December 11, 2017.

Unbeknownst to Shawn, an individual holding herself out as Ellizzette Duvall Minicelli ("Ellizzette"), allegedly participated in a marriage ceremony with John on July 11, 2017, despite a court never first determining whether the proposed marriage would be in John's best-interest in violation of the Probate Act of 1975. 755 ILCS 5/11a-17(a-10).

Contested heirship proceedings commenced after Ellizzette sought to be declared the surviving spouse of John in the trial court. A bench trial concerning Ellizzette's

purported status as John's surviving spouse was presided over by the Honorable James R. Murphy. At the conclusion of Ellizzette's case-in-chief, the trial court granted Shawn's motion for a directed finding ruling Ellizzette failed to make a prima facie case she was John's spouse. Among the stated reasons for granting the motion for a directed finding was Ellizzette's failure to present any evidence showing a best-interest hearing occurred prior to the marriage ceremony taking place.

Ellizzette appealed and the Second District Appellate Court ("appellate court") reversed the trial court's decision finding it committed reversible error by barring Ellizzette from testifying as to her status as John's heir because the Dead Man's Act was amended in 1973 to permit such testimony and the Supreme Court case *Laurence v. Laurence*, 164 Ill. 367 (1896) was no longer the evidentiary rule in Illinois. 735 ILCS 5/8-201(d). The appellate court also opined §11a-17(a-10) of the Probate Act does not require a best interest hearing to take place in order to obtain the court's consent for a ward to marry, and further found the Supreme Court case *Karbin v. Karbin ex rel. Hibler*, 2012 IL 112815, did not support the circuit court's ruling that a best-interest hearing was required in Illinois. The appellate court determined it was also reversible error for the trial court to grant Shawn's motion for a directed finding, due in part, to a best-interest hearing never occurring.

On May 26, 2021, this Court allowed Shawn's timely Petition for Leave to Appeal.

ISSUES PRESENTED FOR REVIEW

1. Whether the vigilant protection wards are entitled to requires a best interest determination pursuant to 755 ILCS 5/11a-17(a-10) to occur in order for a ward deemed to be without capacity, to marry.
2. Whether a petitioner claiming to be an heir of a decedent is required to establish her actual identity in an heirship proceeding.
3. Whether the holding in *Laurence v. Laurence*, 164 Ill. 367 (1896), prohibiting a purported spouse from testifying in an heirship proceeding, controls over legislative amendments to the Dead Man's Act.

STATEMENT OF JURISDICTION

On November 18, 2019, the trial court granted Shawn's motion for a directed finding that Ellizzette failed to make a *prima facie* case for the existence of a valid marriage to the decedent, John W. McDonald III ("John"). (C 2167) The trial court also found there to be no just reason to delay enforcement or appeal pursuant to Illinois Supreme Court Rule 304(a). (C 2167) Ellizzette filed her Notice of Appeal on December 18, 2019. (C 2243-2244) The appellate court had jurisdiction pursuant to Illinois Supreme Court Rule 304(a). The appellate court reversed the trial court in an opinion filed on February 1, 2021. (A1 -A47) On February 9, 2021, Appellant filed his Petition for Leave to Appeal, and on May 26, 2021, this Court allowed the Petition. Jurisdiction lies under Supreme Court Rule 315.

STATEMENT OF FACTS

This case originates from a claim made by the Appellee, n/k/a Ellizzette McDonald, a/k/a/ Lisa Ann Blaydes, a/k/a Ellizette A.M. Duvall, a/k/a Ellizette Blaydes Duvall, a/k/a Ellizzette Ann Mareen McDonald, a/k/a Ellizzette Anne Mareen Minicelli, a/k/a Ellizzette Duvall McDonald, a/k/a Ellizzette B. Minicelli (C570, C599-C609, Sec C 15 - SEC C 25, SEC C 40 - SEC C 50) that she is the surviving spouse of John W. McDonald, III.

In the underlying case, the Appellee did not produce any document which established who she claims to be. She never produced her birth certificate (C751), her divorce decree (C109) from her former spouse (C1096-1099), or her passport. (See, Response to Request for Production of Documents (C594-C609, C642-657, C1366 V2), C734-753).

Shawn McDonald is the duly appointed Administrator of John McDonald III's estate. Also, Shawn was the duly appointed Plenary Guardian of John in a guardianship proceeding in Kane County commonly known as *In Re Estate of John W. McDonald, III*, Case No. 17P151.

The decedent, John W. McDonald, III ("John") was aware of the guardianship proceedings and retained an attorney who participated in them. (C145-C149, C549-C565, C2065-C2067) . During the guardianship proceedings, John was interviewed over the phone and in person by Attorney Fred Beer, his court-appointed Guardian Ad Litem, who prepared a written report detailing John's inability to care for himself, manage his finances and his estate, and make decisions related to his health. (C549-565).

Although Appellee purported to have had a 30-year relationship with John, that claim is not supported anywhere in the record. (C2069-C2070). It was made up. John worked at Johns Hopkins Hospital in Maryland and later in St. Louis, Missouri. Appellee was living in Australia with another man.

Furthermore, Raymond Bement was deposed in the underlying Estate proceeding (17 P744). He testified that, after he officiated at a marriage ceremony where he did not ask the Appellee for identification (C2016), he traveled to Kane County, Illinois. He was accompanied by the Appellee and John to attend a guardianship hearing before Judge Noverini on July 24, 2017. At the deposition, which occurred after the purported ceremony, Bement testified he told John's attorney about the marriage (C2067-C2068), but never informed Shawn or Judge Noverini (C2065).

Shawn McDonald ("Shawn") is John's brother (C20). Shawn did not list the Appellee as an heir in the Petition for Letters of Administration, but did indicate and filed a statement that recited the putative marriage between John and her. After John died intestate, Shawn stated John had participated in a marriage ceremony with Appellee (C19-22). In fact, on December 22, 2017, he filed a pleading in the trial court declaring the marriage to Ellizzette Duvall Minicelli and John was invalid (C29-31). An Order of Heirship was entered on December 19, 2017, by Judge John Noverini who also presided over the guardianship case. (C26). Shawn was appointed Administrator of John's estate on December 21, 2017 (C27). After Appellee filed a motion for substitution of judge (C47-48), the case was assigned to Judge James R. Murphy (C406). Appellee was granted 21 days to answer Shawn's Petition and never did (C43).

On January 17, 2018, Appellee filed a Motion to Vacate the Order appointing Shawn as Administrator (C50). This motion was denied on April 18, 2018 (C240). Appellee was then granted leave to file a petition to be appointed administrator of John's Estate (C376), even though the three month time period to do so (755 ILCS 5/9-7) had expired. At no time did Appellee file a petition to remove Shawn as Administrator. Also, Appellee filed a Motion to Stay any hearing on Shawn's Petition to Invalidate the Marriage (C69). On January 18, 2018, Shawn filed a motion to prohibit transfer of assets (C98). A temporary restraining order was entered in favor of the Administrator

(C143). The Court also entered an order binding the parties in the probate case to orders in the guardianship case, 17 P 151, in which Shawn was made John's plenary guardian in May 2017 (C21, C141).

Shawn filed a motion to turnover blood samples of John's blood (C111). After Appellee failed to comply with discovery, a citation pursuant to 755 ILCS 5/16-1 was served on Appellee to give testimony (C255). Shawn filed a Motion to Compel Discovery (C305-C328) on June 5, 2018. Two days later, Appellee filed a Motion for Judgment on the Pleadings (C345-C359) as to her Petition for Letters of Administration she had filed on May 1, 2018 (C275-C276). At that time, Shawn was still engaged in discovery (C377). On June 3, 2018, Judge Murphy entered an order compelling Appellee to comply with discovery (C400-C401). On July 6, 2018, the Court ordered counsel for Appellee to produce her for a deposition (C474). The court entered another discovery order compelling Appellee to appear for a deposition on July 19, 2018 (C544). Shawn filed another Motion on July 25, 2018, compelling discovery because Appellee failed to appear as ordered by the Court (C570). On August 6, 2018, a Motion for Sanctions was filed against Appellee for discovery abuse (S. Ct. R. 218). (C621) When Appellee was finally deposed, her real identity became a factual issue (C736). Appellee was born Lisa Anne Blaydes on March 21, 1963 (C751). A completely different identity was used when she applied for a marriage license with John (C753, C760-C765).

Appellee's Motion for Judgment on the Pleadings as to the Petition to be appointed Administrator was denied on September 10, 2018 (C754). A trial order was entered on September 18, 2018 at Appellee's request (C756). The same day, the Court entered an additional order which required Appellee to be fingerprinted if she wished to pursue being administrator (C757). On October 17, 2018, in anticipation of trial a month later, Appellee's counsel began issuing trial subpoenas (C793, C802, C815, C820, C823, C828, C833, C838, C841, C848, C853, C858, C861, C866, C871, C885, C889,

C894, C898, C905, C913, C919, C927, C939, C944). Eight days later, the trial was continued (C967) at Appellee's request (C878).

On October 2, 2018, Shawn asked the Court to take judicial notice of the marriage application and record, marriage license and certification of marriage relating to Ellizzette Duvall Minicelli and John (C760-C765). At various places, these records indicate Appellee was born in Lyon, France, on March 21, 1964. They indicate the marriage license is only valid in Edgar County, Illinois, and Raymond Carl Bement was the Officiant. (C2060-C2099). Appellee argued in the trial court that Shawn's motion for judicial notice was for the purpose of trying to "invalidate Ellizzette's marriage to the decedent" (C970). The Court granted Shawn's motion (C1058) and entered a case management order (S. Ct. R. 218) (C1059).

On November 7, 2018, Shawn filed a Motion to Deem Facts Admitted relating to a Request to Admit (S. Ct. R 216) (C978-C1006). In it, he sought admissions as to certain birth records and Appellee referring to herself as being a supposed neurosurgeon on staff at New York Presbyterian Hospital (C991-C992). On December 12, 2018, Shawn filed a Motion to Compel Discovery because of the Appellee's refusal to turnover the decedent's laptop and cell phone (C1079-C1089). On December 12, 2018, Shawn served an additional Request to Admit (C1091) on Appellee seeking admissions as to Ellizzette Duvall pleading guilty to forgery (C1094-C1095); and a copy of appellee's Judgment of Dissolution to her former husband, Joseph Zollner (C1096-C1109). In that divorce decree, Appellee was restored to her former name of Lisa Ann Blaydes (C1108). It indicates Appellee was married on June 18, 1988. The divorce judgment was entered September 17, 1996. At a hearing on the motion to compel, Shawn's motion was granted (R2, R15) (A49-A62) (C1390). Subsequently, Appellee's trial counsel withdrew (C1407, C1414).

Because Appellee refused to turnover the decedent's laptop and cell phone, a Rule to Show Cause issued on March 12, 2019 (C1417). A hearing on the Rule was conducted on May 1, 2019 (C1609) (R70-R194) (A117-A241). At the conclusion, Appellee was sanctioned monetarily by Judge Murphy (C 1611, C1614-C618, C1620).

Due to his concern about Appellee's true identity and holding herself out as a physician, Shawn issued a series of Requests to Admit to the Appellee (C1419-C1440) (C1442-C1450). Appellee's trial counsel then reentered the case on April 10, 2019 (C1511). After the Rule to Show Cause hearing, Appellee was ordered to be fingerprinted by the Kane County Sheriff (C1612). Those fingerprint records were never obtained or filed by her.

Thereafter, Appellee's trial counsel issued multiple subpoenas and medical records requests (C1674). These related to physicians who had treated John during the guardianship proceeding. None of them were ever called at trial (R242-R412) (A289-A459). Only one of John's colleagues, Visar Belegu, testified that he was unfamiliar with any of the physicians, Drs. Nadkarni, Greenberg, and Gonzalez, who rendered opinions on John's lack of capacity in the guardianship proceeding (R296, R316-R324) (A343, A363-A371). Soon after, Appellee's trial counsel sought to depose all of these physicians involved in the guardianship proceeding and others (C1749-C1756, C1796-C1797). None were ever deposed.

On July 29, 2019, because Appellee's trial counsel could not timely depose certain physicians, she sought an order from the trial court extending the time to complete discovery (C1610) (C1849-C1855). The Court entered an order authorizing an extension on August 8, 2019 (C1875). Thereafter, on August 23, 2019, Shawn filed a Request to Admit a certain criminal record relating to Ellizzette Duvall a/k/a Lisa Blaydes (C1948) from the State of New York (C1945-C1952). This request was a felony record of Ellizzette Duvall a/k/a Lisa Blaydes being convicted of misrepresenting herself as a

physician (C1954-C1956). Soon after, Appellee's trial counsel withdrew from the case for the second time on September 18, 2019 (C1986).

On October 16, 2019, Shawn filed a motion in limine seeking to bar Appellee from testifying since her testimony would violate the Dead Man's Act (735 ILCS 5/8-201) (C2005-C2039). A *pro se* appearance was filed by Appellee on October 23, 2019 (C2043). A hearing was conducted on October 23, 2019 (R195-R241) (A242-A288). At that time, the Court granted Shawn's Motion for Judicial Notice of the criminal felony conviction of the Appellee misrepresenting herself as a physician (R213-R214) (A260-A261). The Court deferred ruling on Shawn's Motion in Limine (R237) (A284). At the hearing, the Court said the following:

We have a trial date scheduled. It's a firm trial date and it's going to go because there's (sic) witnesses; so I was asking whether you were going to be involved in preparing your side for the trial

So I was asking whether it's realistic that we have a November 18th trial date, and you said, yes, you want to get it done.*** (R239) (A286)

Appellee filed a response to Shawn's Motion in Limine on October 30, 2019 (C2045-C2051). Shawn filed a reply on November 4, 2019 (C2052-C2153). On November 13, 2019, a hearing was conducted (C2166). Shawn's motion barring Appellee from testifying was granted (C2197-C2234).

At this hearing, on November 13, 2019, Appellee indicated she was ready to proceed to trial on November 18, 2019, with her witnesses (C2203). She outlined who her witnesses would be at that time (C2204-C2205, C2210, C2211). At the hearing, Appellee conceded the fact she did not want to be administrator of John's estate (C2227) and she told Judge Murphy she would be at the trial (C2232). Appellee abandoned her petition to be administrator on November 13, 2019 (C2227).

The bench trial commenced on Monday, November 18, 2019 (R242-R394) (A289-A441). At that time, Appellee claimed she was not ready for trial (R247) (A294),

claiming to have filed her motion to continue the trial the previous day, electronically (R248) (A295).

In the motion, Appellee declared her father was given end of life, and her mother could not testify due to her cancer treatment (R248) (A295). She said she and her witnesses had "all come from out of state" (R248) (A295). She also indicated she had called the Clerk's office the previous Friday (R249) (A296) and her "assistant had also called" (R250-R251) (A297-A298).

The Court located the motion and, in reviewing it, stated "Okay, I have the motion. So you are asking not only for a continuance of today's date, but you are asking for leave to have your attorneys come back into the case?" (R252) (A299) (C2169-C2171). After considering all the arguments and Shawn's argument, the Court stated:

*** THE COURT: The Court is subject to considerations of Supreme Court Rule 231 when there is an application for a continuance on the day of trial that this motion was filed 11/18, today, at 3:49 a.m., and noticed up for December 3rd at 9:00 a.m., because of somebody at the clerk's office saying that's the best they could do is notice it up, it is here as an emergency, more or less. It doesn't designate or follow our local rules as far as emergency, but I am considering it and I've considered all your arguments.

And as far as due diligence, from the arguments that you make, Ms. McDonald, regarding what you don't have, what you would like to have, those things have been going on for two months now, when your attorneys withdrew. And on Thursday, you represented that you would be ready nonetheless to proceed pro se, and you represented the same things that you're representing this morning as far as father's end-of-life treatment. And then you contacted the clerk's office and nothing happened on Friday, nothing happened Saturday, Sunday, until this morning; and so as far as due diligence, there is - - there's a want or lack of due diligence to present this motion.

There was no due diligence in the motion or the affidavit that should be attached (R265-R266) (A312-A313).

At any rate, I'm still talking.

So there are - - there is a lack of showing that the evidence would be material to this - - to the issues in this case as well. And so - - and also the reason that you need to re-engage your attorneys to act for you

doesn't show me that there was due diligence on that either, and that same reason was - - existed for the last two months and nothing was ever said to prevent us from going forward with the trial today, which we have reserved time for you and you assured us that we would be ready to go, or that you would be ready to go even though you didn't think you were totally ready. And as far as your father's condition, you would still be able to do this.

Now, without - - so, therefore, what I'm going to do is deny the motion to continue today. If you can't go forward, we'll take it from there. If you can go forward, then you should put on your first witness, because I've already had enough of opening statement through all this talk in regards to the motion to continue to know what the issues are going to be.

So you have apparently brought one of your witnesses here today so - - at least one. So if you want to call your first witness, we can go ahead this morning. Otherwise, we are going to - - we'll go from there. It depends what you want to do. If you want to talk to the parties you came with and we'll take a break for 10 minutes. *** (R267-R268) (A314-A315)

Thereafter, Appellee said she was ready to call her first witness (R22) (A67). She called three: Diane Boyer (R276) (A323), Dr. Visar Belegu (R295) (A342) and Ray Bement (R331) (A378). Neither Boyer or Belegu testified about the purported marriage ceremony. Bement was the Officiant.

During his testimony, Mr. Bement testified he was unaware that John McDonald had a plenary guardian named for him (R348) (A395). Mr. Bement testified the purported marriage ceremony was conducted in Piatt County, not Edgar County (R363) (A410). At the time of that ceremony, at trial, he said he did not know who Ellizzette Duvall Minicelli was. At his deposition, he testified to the contrary (R365-R367) (A412-A414). He admitted there were no witnesses to the marriage ceremony in Piatt County (R368) (A415). He never obtained an Edgar County marriage license (R369). He testified he only knew the Appellee by the name "Duvall" (R373) (A420).

At the close of the Appellee's trial evidence, Shawn moved for a directed finding (R377) (A424). The Court heard arguments and ruled. In doing so, the Court found that Appellee failed to show a valid application for a marriage license in Edgar County,

a ceremony witnessed by two persons (R390) (A437) in Edgar County, and the ceremony did not comply with the best interest determination as required under the Probate Act (R392) (C2167) (A439). Judgment was entered on November 18, 2019. A Notice of Appeal was filed on December 18, 2019 (C2241).

The Appellate Court filed its opinion on February 1, 2021, reversing in part and affirming in part the trial court. Shawn filed a Petition for Leave to Appeal (#126956) on February 9, 2021. The Petition for Leave to Appeal was granted on May 26, 2021, and Shawn filed his notice of election to file a brief consistent with Supreme Court Rule 315 on June 4, 2021.

STANDARDS OF REVIEW

The standard for reviewing a trial court's ruling on an evidentiary matter, such as the granting or denial of a motion *in limine* is for an abuse of discretion. *People v. \$5,608 U.S. Currency*, 359 Ill.App.3d 891 (2nd Dist. 2005). A trial court's ruling on an issue involving the Dead Man's Act will not be reversed unless the error was substantially prejudicial and affected the trial's outcome. *In re Estate of Goffinet*, 318 Ill.App.3d 152, 156 (4th Dist. 2001).

The standard of review on a motion for directed finding pursuant to 735 ILCS 5/2-1110 depends on the nature of the proof adduced. *Kokinis v. Kotrich*, 81 Ill.2d 151 (1980). The trial court must first determine whether the plaintiff established a *prima facie* case by presenting at least some evidence on every element essential to the underlying cause of action. *Kokinis*, 81 Ill.2d at 154. A trial court's determination that a plaintiff failed to present a *prima facie* case is reviewed *de novo*. *People, ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 275 (2003).

If a plaintiff is found to have presented a *prima facie* case, the trial court then determines the totality of the evidence presented, considering the credibility of the witnesses, the weight and quality of the evidence, and any evidence favorable to the defendant. *People ex rel. Sherman*, 203 Ill.2d at 275-276. As to this latter determination, the trial court will only be reversed if the ruling is against the manifest weight of the evidence. *Kokinis*, 81 Ill.2d at 154.

ARGUMENT

I. THE VIGILANT PROTECTION WARDS ARE ENTITLED TO INCLUDES REQUIRING A COURT TO DETERMINE WHETHER IT IS IN THE WARD'S BEST INTEREST TO MARRY.

When a court determines an individual completely lacks capacity, declares them to be a ward of the court, and appoints a plenary guardian, that ward is entitled to heightened protection without exception. When the appellate court held the Probate Act does not require a court to make a best-interest determination before a ward enters into a marriage contract, it stripped away the vigilant protection this Court proclaimed disabled persons are entitled to. *Karbin v Karbin, ex rel. Hibler*, 2012 IL 112815. The essence of a guardianship is to protect the most vulnerable members of our society from neglect, exploitation, and abuse. 755 ILCS 5/11a-3 (b). John W. McDonald, III, was one such individual. The law harbors vigilance for those who need it most. Only when a best interest determination as to a ward's decision to marry is required, can this promise of vigilant protection be kept while simultaneously preserving the integrity of marriage and safeguarding family relationships.

The promise of vigilant protection originates from the fact disabled individuals are recognized and viewed as a "favored person in the eyes of the law". *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815, ¶45 (quoting *In re Mark W.*, 228 Ill.2d 365, 374-375 (2008)). At issue in *Karbin* was whether a guardian had standing under the Probate Act to institute marital dissolution proceedings on behalf of the ward. *Id.* Similar to Shawn's appointment as plenary guardian of his brother John, the guardian in *Karbin* also served in a dual capacity over her mother's person and estate. *Id.* at ¶22. The analysis in *Karbin* commenced with an overview of the Probate Act's adult guardianship provisions noting a guardian is required to act in the ward's best interests in all instances with the guardianship to be utilized only as necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse. *Id.* at ¶12. In overruling the majority rule set forth in *In re Marriage of Drews*, 115 Ill.2d 201 (1986),

which prohibited a guardian from instituting a dissolution proceeding on behalf of a ward absent statutory authorization, this Court noted the Supreme Court and appellate court have more recently relied on the notion of “implied authority” rather than requiring explicit authority in determining the power of a guardian to act. *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815, ¶¶32-34; *See, In re Estate of Longeway*, 133 Ill.2d 33, 45-46 (1989) (plenary guardian has implied authority under §11a-17(a) to make decision on behalf of the ward regarding the use of life-sustaining measures); *In re Estate of Greenspan*, 137 Ill.2d 1 (1990) (same); *In re Estate of K.E.J.*, 382 Ill.App.3d 401 (2008) (pursuant to §11a-17(a), a guardian may seek to have a ward undergo involuntary sterilization).

The outcome in *Karbin* was justified by noting the difficulty accepting the view that the decision to divorce is qualitatively different than the other deeply personal decisions a plenary guardian has the decision-making capability of, such as the decision to refuse life-sustaining treatment or the decision to undergo involuntary sterilization, both of which can rarely be undone. *Karbin*, 2012 IL 112815, ¶42. Whereas with respect to the decision to divorce, a disabled adult could regain competency making remarriage to the former spouse possible. *Id.* So too is the case here, where John could have regained competency dispensing with the need for a best interest hearing prior to entering into marriage with Ellizzette. The decision observed the traditional rule employed in *Drews* results in inequity to the disabled party who would be at the complete mercy of the competent party without any consideration for the disabled party’s best interests. *Id.* at ¶45.

In direct response to this Court’s decision in *Karbin*, the State Legislature enacted §11a-17(a-10) in the Probate Act. 2014 Ill. Legis. Serv. P.A. 98-1107 (S.B. 2954)

(WEST). The section is directed toward the scenario of a ward who seeks to marry another while under a guardianship and provides as follows:

Upon petition by the guardian of the ward's person or estate, the court may authorize and direct a guardian of the ward's person or estate to consent, on behalf of the ward, to the ward's marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward's best interests. In making its determination, the court shall consider the standards set forth in subsection (e) of this Section. Upon presentation of a court order authorizing and directing a guardian of the ward's person and estate to consent to the ward's marriage, the county clerk shall accept the guardian's application, appearance, and signature on behalf of the ward for purposes of issuing a license to marry under Section 203 of the Illinois Marriage and Dissolution of Marriage Act. 755 ILCS 5/11a-17(a-10).

The General Assembly's heightened concern for the security of a ward is illustrated through the requirement of clear and convincing evidence as the quantum of proof as to determining whether a marriage would be in the ward's best-interest. The burden of proof is the equivalent of showing such evidence that leaves no reasonable doubt in the mind of the trier of fact. *Matter of Larimore's Estate*, 64 Ill.App.3d 470 (3rd Dist. 1978).

It is axiomatic that vigilant protection is a concept that is pro-active as opposed to reactive. When the appellate court briefly distinguished *Karbin* at the end of its opinion and concluded a best-interest hearing pursuant to §11a-17(a-10) is not required before a disabled ward can marry on his or her own accord, it failed to appreciate and consider the power balance it endorsed between competent and incompetent parties. *In re Estate of McDonald*, 2020 IL App (2d) 191113, ¶104. The conclusion rendered the statute itself a nullity and completely undermined a court's ability and duty to safeguard its own ward. See *Rushton v. Department of Corrections*, 2019 IL 124992, ¶14, (a statute should be in its entirety, keeping in mind the subject it addresses and the apparent intent of the legislature in enacting it). Common sense is not set aside when construing statutes. *Nelson v Artley*, 2015 IL 118058. The outcome is precisely the type

of outcome this Court warned against in the *Karbin* decision. *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815, ¶45. The vigilant protection John was entitled to became illusory.

Although the facts of *Karbin* involved the decision of a disabled ward to divorce, John's decision to marry is indistinguishable. Like the decision to divorce, the decision to marry is among the most significant undertakings a person makes in their life. The decision carries with it a wide range of repercussions and consequences involving rights, duties and responsibilities. The prospect of financial exploitation, physical or emotional abuse, and neglect can be the unfortunate end-product of such decisions which are hastily made without careful, prior examination. This risk is magnified when one of the parties seeking to get married is subject of a plenary guardianship and the plenary guardian and court are not involved in the decision making. Long standing family relationships such as the ones John's parents and siblings shared with him can be upended and usurped by another claiming to be the spouse and rightful heir to the disabled ward's estate. Scenarios such as these are precisely what a plenary guardianship seeks to avert. 755 ILCS 5/11a-18; 755 ILCS 5/11a-22. By enacting 755 ILCS 5/11a-17(a-10), the General Assembly created a procedural tool for courts in Illinois to prevent such devastating outcomes and ensure the consequential decision to marry would first involve carefully examining whether embarking on such a course is in the ward's best-interest. 755 ILCS 5/11a-17(e).

The facts of this case illustrate exactly what can happen when a ward marries in the absence of a best-interest hearing being conducted first. John's status as a ward was the result of untreated and uncontrolled psychiatric and substance abuse disorders. Less than six weeks after being declared a ward, John and Ellizzette secretly married without adherence to the two witness rule. *Pike v. Pike*, 112 Ill.App. 243 (1st Dist. 1904). This secret arrangement was carried out without the prior knowledge of John's plenary

guardian, Shawn, or the consent of the probate court which had recently determined John to be completely without capacity. As will be discussed in greater detail later in this brief, the application for John and Ellizzette's marriage falsely endorsed her actual identity with a fictitious last name, date of birth, location of birth and listed occupation. All of this information was untrue. Through discovery in the heirship proceedings, Shawn learned, and apprised the court of Ellizzette's employment of no less than eight different identities. (A502-A512). A practice for which she was previously prosecuted. This troubling history was directly connected to the trial court requiring Ellizzette to be fingerprinted in the lead-up to the trial in order to determine who she actually was. Because a best interest hearing never took place, a disabled ward was able to marry a dissembler.

The end result of the appellate court determining the Probate Act contains no requirement for a best-interest hearing with respect to a ward's decision to marry, is that all wards, such as John, suffer the inequity of being left to the complete mercy of the individuals they choose to wed, without any prior consideration for their best-interests. To reach such a conclusion in the face of the Illinois Supreme Court having declared the disabled to be among the most vulnerable in our society being entitled to vigilant protection, was respectfully, erroneous. *Karbin v. Karbin, ex rel. Hibler*, 2012 IL 112815, ¶48. The requirement of a best-interest hearing not only endorses this declaration of safeguarding a ward into practice, it strengthens and preserves the integrity of marriage and safeguards family relationships which is also the stated purpose of the Marriage Act. 750 ILCS 5/102(2). If the hegemony of these historical values are to be preserved, the appellate decision must be reversed, and the trial court's determination that a best interest hearing pursuant to §11a-17(a-10) is required in Illinois with respect to a ward's decision to marry should be affirmed. 755 ILCS 5/11a-17(a-10).

II. THE APPELLATE COURT DECISION FAILED TO ACKNOWLEDGE ELLIZZETTE NEVER ESTABLISHED HER ACTUAL IDENTITY THROUGHOUT THE TRIAL PROCEEDINGS.

When the appellate court concluded Ellizzette had made a *prima facie* case at the close of her evidence, it failed to appreciate Ellizzette's actual identity was at issue, unresolved and never established through the evidence she presented to the trial court during the heirship proceedings. It is self-evident that the actual identity of an individual claiming to be an heir of a decedent in a contested heirship proceeding matters. The object of heirship proceedings is to determine to whom the law would distribute a decedent's estate. *George v. Moorhead*, 399 Ill. 497 (1942). When considering that objective, how could the identity of an heir not be elemental? As the petitioner claiming to be the surviving spouse of John W. McDonald, III, it was Ellizzette's burden to prove who she was. *In re Estate of Severson*, 107 Ill.App.3d 634, 636 (2nd Dist. 1982)(burden of proof in heirship proceeding is on party claiming heirship).

Since this integral element remained unresolved throughout trial proceedings, Shawn made a motion for a directed finding at the conclusion of Ellizzette's evidence on the basis that she failed to make out a *prima facie* case as to her purported marriage to John. By its very definition, a "*prima facie* case" entails "[t]he establishment of a legally required rebuttable presumption" or "[a] party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." Black's Law Dictionary 1330 (9th Ed. 2009). When Ellizzette failed to prove her identity, the trial court correctly determined the litigation could not proceed to a subsequent stage which consequently entitled Shawn to judgment in his favor as a matter of law. *Kokinis v. Kotrich*, 81 Ill.2d 151 (1980).

It is important to consider that at the time of trial, a standing court order was in place for Ellizzette to submit to fingerprinting at the Kane County Sheriff's Office as a result of Shawn learning through the discovery process and then apprising the trial court of Ellizzette's utilization of no less than eight different identities, a practice for which she

was previously prosecuted. (A502-A512) (C1945-1952) Despite multiple orders requiring her to be fingerprinted, Ellizzette continuously failed to comply with the court's directive and she proceeded to trial notwithstanding. Ellizzette's actual identity was then, and is now, a mystery. The appellate decision not only failed to appreciate the outstanding court order requiring fingerprinting, it also never acknowledged the multiple identities Ellizzette utilized, one of which appeared on her marriage license application with John. The appellate opinion was silent as to both matters.

Rather than scrutinizing the identity issue, the appellate court directed its focus on a decision the trial court made almost a year before trial when it granted Shawn's motion for judicial notice of John and Ellizzette's marriage license and application. The purpose underlying that motion was not to establish a valid marriage ceremony occurred, but rather to take notice of the information contained in public records with respect to Ellizzette's purported identity. See *Muller v. Zollar*, 267 Ill.App.3d 339 (3rd Dist. 1999) (Judicial notice is proper when the matter is part of public record). Ellizzette's objection to the factual contents of these documents being judicially noticed unquestionably revealed her understanding of the motivations behind Shawn's motion. (C968-971).

The falsehoods contained in the marriage documents Shawn sought judicial notice of concerning Ellizzette's identity alone were notable. (C764-C765) (A516) Ellizzette's name, birth year and place of birth were all inconsistent with the information which was listed in her birth record obtained from the Cook County Clerk. Ellizzette was born with the last name Blaydes, not Duvall.(C751). She was born in 1963, not 1964. (C751). She was born at Holy Family Hospital in Des Plaines, Illinois, not Lyon, France. (C751). Her listed occupation as a physician scientist was similarly a work of fiction (C597-C598), one she was previously prosecuted for in the State of New York following the events of September 11, 2001, for falsely representing herself to be a doctor. (C 1948 V3).

Beyond that, even the location of the purported ceremony occurring in Paris, Edgar County, Illinois was invented. (C762-C763, C765) Despite all of this information being fabricated, Ellizzette nevertheless certified to the Edgar County Clerk that it was all correct to the best of her knowledge and belief. (C764).

The unresolved issue related to Ellizzette's identity was also captured during the trial proceedings when her own witness, wedding officiant Ray Bement testified as to possessing no knowledge of a person by the name of Ellizzette Duvall Minicelli, the name appearing on the marriage licence application he purportedly signed. (A413). When ruling on a motion for a directed finding, the court is required to consider all of the evidence, including any evidence which is favorable to the moving party. *Kokinis v. Kotrich*, 81 Ill.2d 151, 154 (1980). In this particular instance, the evidence favorable to Shawn was overwhelming. The individual John is alleged to have married does not exist.

Falsifying information on a marriage license related to a person's name, birth date, birth place, occupation and the location of the purported marriage does not strengthen and preserve the integrity of marriage and safeguard family relationships, the stated purpose of the Marriage Act. 750 ILCS 5/102(2). Deceptive practices such as these make a mockery of it. So does the fact the officiant who presided over the purported wedding ceremony possessed no knowledge of the stated identity of the person he supposedly married. (A413-A414).

The vigilant protection wards are entitled to during their life, naturally extends to their estates. *In re Estate of Wellman*, 174 Ill.2d 335, 348 (1996) (the trial court protects the disabled person as its ward, vigilantly guarding the ward's property and viewing the ward as a favored person in the eyes of the law). By failing to consider the identity issue, the appellate finding enabled those whose actual identity is never established, the ability to advance fraudulent claims against an estate to the detriment of a decedent's true heirs. Because Ellizzette failed to satisfy her burden in establishing

her actual identity during the heirship proceedings, it cannot be said that a *prima facie* case was made, and therefore, this Court should reverse the appellate court's judgment.

III. ILLINOIS RULE OF EVIDENCE 101 WAS ABROGATED WHEN THE APPELLATE COURT PERMITTED THE LEGISLATURE'S AMENDMENT TO THE DEAD MAN'S ACT TO USURP THE SUPREME COURT'S DECISION IN *LAURENCE V. LAURENCE*, 164 ILL. 367 (1896).

When the appellate court opined this Court's decision in *Laurence v. Laurence*, 164 Ill. 367 (1896) no longer remained the rule in Illinois, it did so on the basis that the decision in *Laurence* analyzed the Dead's Man's Act as it stood in 1896, and since that time, the Act was amended to no longer include a restriction on a person's ability to testify during an heirship proceeding. 735 ILCS 5/8-201(d). In support of its decision, the appellate court cited the cases of *In re Estate of Bailey*, 97 Ill.App.3d 781 (1981) and *In re Estate of Hutchins*, 120 Ill.App.3d 1084 (1984). The error of the appellate decision, along with the decisions in *Bailey* and *Hutchins*, is a statutory rule of evidence was allowed to control over *Laurence*, a Supreme Court decision which has remained undisturbed in the twelve plus decades since it was originally decided. *Laurence v. Laurence*, 164 Ill. 367 (1896). This outcome is squarely at odds with Illinois Rule of Evidence 101, which declares a statutory rule of evidence only to be effective so long as it does not conflict with a decision of the Illinois Supreme Court. Ill. Rule of Evid. 101. On that basis alone, the decision in *Laurence* must control. It is the potential reason litigants and courts throughout the state continue to find *Laurence* authoritative despite the General Assembly's amendment. *In re Estate of Bailey*, 97 Ill.App.3d 781 (1981); *In re Estate of Hutchins*, 120 Ill.App.3d 1084 (1984); *In re Estate of McDonald*, 2021 IL App (2d) 191113. The appellate decision in this case is also problematic in that by claiming *Laurence* was no longer the rule, it undermined the very purpose of the Dead Man's Act itself.

The theory behind the Act is that, as the mouth of the deceased is closed by death, the mouth of the living who asserts a claim against the dead shall be closed by

law. *In re Maher's Estate*, 210 Ill. 160, 169-170 (1904). The Act is an evidentiary rule intended to protect decedents' estates from fraudulent claims and it equalizes the parties' positions in regard to giving testimony. *Balma v. Henry*, 404 Ill.App.3d 233, 237-238 (2nd Dist. 2010); *In re Diak's Estate*, 70 Ill.App.2d 1, 6 (1st Dist. 1966). The Act bars only that evidence that could have been refuted by the decedent. *Gunn v. Sobucki*, 216 Ill.2d 602, 609 (2005). To allow an heir to testify in direct contradiction to another person's claim of heirship is to afford him the opportunity of acquiring a greater portion of the estate than that to which he may otherwise be entitled. *In re Diak's Estate*, 70 Ill.App.2d 1, 6 (1st Dist. 1966).

The appellate court's ruling that Ellizzette should have been provided the opportunity to testify regarding her claimed marriage to John, would have afforded her the opportunity of acquiring the entirety of John's estate irrespective of Shawn's objection to her claimed status and his insistence that she represented nothing more than a legal stranger. The precise scenario was prohibited in *Laurence*, 164 Ill. 367 (1896). Furthermore, after considering the factual backdrop of this case, the allowance of such allegations would present an almost impossible proposition for Shawn to rebut because the marriage between John and Ellizzette was designed to be without a single witness and most importantly because of John's death. *In re Maher's Estate*, 210 Ill. 160, 169-170 (1904). If the intent of the Act is to protect John's estate from fraudulent claims and also to equalize Shawn and Ellizzette's positions with respect to giving testimony, the appellate decision did the opposite. It improperly flipped the spouse's burden of proving heirship, described by the court in *Bailey* as "onerous", onto the administrator to instead disprove it. *In re Estate of Bailey*, 97 Ill.App.3d at 784 (5th Dist. 1981).

The "onerous burden" in proving heirship for an alleged spouse as discussed in the *Bailey* decision is difficult to fathom when considering weddings are historically one

of the most heavily attended and celebrated events of a person's lifetime. Entire industries across the globe exist because of the significance of the event. There are photographs and videos taken to memorialize and document the occasion. Marriages and even engagements are often publicly broadcasted through written announcements in newspapers, newsletters, and on the internet. Engagement rings and wedding rings are often exchanged. Dresses or gowns, are typically purchased, rented or borrowed to be worn during the ceremony. Cards, letters and gifts are received from family, friends, and colleagues. The list of keepsakes, mementos, and similar items one may acquire from a marriage ceremony is endless. In the case at bar, Ellizzette offered the trial court none of these things to consider and an offer of proof like the one made by the petitioner in *Bailey* wasn't even attempted.

In that offer of proof, the petitioner in *Bailey* testified about when she started dating the decedent, the date they were married, where they were married, and that the marriage was witnessed by three individuals. *Bailey*, 97 Ill.App.3d at 784 (5th Dist. 1981). The offer of proof was strongly corroborated by nine exhibits and the testimony of seven disinterested witnesses who testified that the reputation of the decedent and the petitioner in the community was that of husband and wife, that the decedent held himself out to be petitioner's husband, and also engaged in a course of conduct for over thirty years pointing to the conclusion that they were in fact married. *Bailey*, 97 Ill.App.3d at 786 (5th Dist. 1981). The evidence presented by Ellizzette in the case at bar shared none of these notable hallmarks evidencing a marriage present in *Bailey*. They are at opposite ends of the spectrum.

An offer of proof informs the trial court, opposing counsel, and the reviewing court of the nature and substance of the evidence sought to be introduced and is the key to preserving a trial court's alleged error in excluding evidence. *Colella v. JMS Trucking Company of Illinois, Inc.*, 403 Ill. App. 3d 82, 93 (1st Dist. 2010). The failure to make

an adequate offer of proof forfeits the issue on appeal. *Pyramid Development, LLC v. Dukane Precast, Inc.*, 2014 IL App (2nd) 131131, ¶41. The fact Ellizzette was representing herself during the heirship proceedings does not modify this obligation. A court will not apply a more lenient standard to *pro se* litigants. *People v. Adams*, 318 Ill.App.3d 539 (2nd Dist. 2001).

There exists a pressing need for this Court to finally declare whether the holding in *Laurence* remains the rule in Illinois. It is evidenced by this case, in addition to the prior cases of *In re Estate of Bailey*, 97 Ill.App.3d 781 (1981) and *In re Estate of Hutchins*, 120 Ill.App.3d 1084 (1984). Without the needed guidance, litigants and probate courts will remain at odds concerning the ability of a purported spouse to testify about their heirship status with a decedent. Illinois Rule of Evidence 101 directs the Court to determine *Laurence* still controls. Because that decision furthers the purpose of the Dead Man's Act, this Court should reverse the appellate decision.

Finally, even if Ellizzette was afforded the opportunity to testify about the marriage ceremony she claims to have participated in with John, it does not change the fact John's status as a ward of the court was known by her (A430) and a best interest hearing, required by law and the Illinois Supreme Court, was never held prior to the ceremony taking place. 755 ILCS 5/11a-17(a-10). Without such a hearing and showing by clear and convincing evidence that the marriage would be in the best interest of John, whatever unwitnessed ceremony Mr. Bement presided over in Piatt County (A430), between Ellizzette and John was void *ab initio*.

CONCLUSION

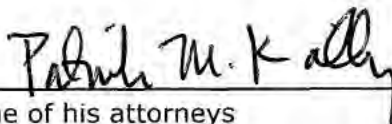
Ensuring a ward is vigilantly protected from neglect, exploitation and abuse is not an aspirational concept. It is a clear directive this Court issued through its ruling in *Karbin*. As a disabled person completely without capacity, John W. McDonald, III represented one of the most vulnerable members of our society. His status as a ward entitled him to vigilant protection which also extended to his estate. An essential component of that vigilant protection is a best interest determination as to the decision to marry. This critical safeguard ensures long standing family relationships such as the ones John's parents and siblings shared with him remain intact and are not usurped by the fraudulent claims of others purporting to be the rightful heir to the disabled ward's estate.

For these reasons, Appellant, Shawn McDonald, respectfully requests this Honorable Court reverse the appellate court's judgment and affirm the trial court's directed finding in his favor.

Respectfully submitted,

Shawn McDonald

By:


One of his attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 26 pages.

Respectfully submitted,

Shawn McDonald

By: 
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STATE OF ILLINOIS)
)
 COUNTY OF KANE) SS

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and states that she served via email a copy of the foregoing **Brief and Appendix of Appellant, Shawn McDonald** on the 30th day of June, 2021, or if email delivery is not available, in a United States Post Office Box in the City of Aurora, Kane County, Illinois, before the hour of 6:00 p.m., with United States postage fully prepaid thereon, enclosed in an envelope properly and securely sealed, or by other means if so indicated, to:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Patricia M. Kelly

No. 126956

**IN THE SUPREME COURT
OF THE STATE OF ILLINOIS**

<p>In The Matter of the Estate of:</p> <p>JOHN W. MCDONALD, III</p> <p style="padding-left: 40px;">Deceased.</p> <p>SHAWN MCDONALD,</p> <p style="padding-left: 40px;">Appellant,</p> <p style="text-align: center;">v.</p> <p>ELLIZZETTE MCDONALD,</p> <p style="padding-left: 40px;">Appellee.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>On leave to appeal from the Appellate Court of Illinois, Second District, No. 2-19-1113</p> <p>There on Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois, No. 17-P-744</p> <p>Date of Judgment: March 2, 2020</p>
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NOTICE OF FILING

<p>TO: Steven J. Roeder Thomas D. Gipson Roeder Law Offices LLC 77 West Washington Street, Suite 2100 Chicago, IL 60602 <input checked="" type="checkbox"/> Via Email: sjr@roederlawoffices.com <input checked="" type="checkbox"/> Via Email: tdg@roederlawoffices.com</p>	<p>Robert G. Black Law Offices of Robert G. Black, PC 101 N. Washington Street Naperville, IL 60540 <input checked="" type="checkbox"/> Via Email: rblack@rgb-law.com</p>
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PLEASE TAKE NOTICE that on the 30th day of June, 2021, we have submitted for electronic filing with the Clerk of the Supreme Court of Illinois the attached **Brief and Appendix of Appellant, Shawn McDonald**.

Kinnally Flaherty Krentz Loran Hodge & Masur



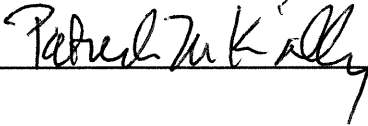
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PROOF OF SERVICE

The undersigned on oath states that on June 30, 2021, I served this Notice via email to each person to whom it is directed.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.



APPENDIX

APPENDIX

TABLE OF CONTENTS

Appellate Court, Second District, Opinion 2/1/2021	A-1
Report of Proceedings Vol. I	A-48
Report of Proceedings 1/29/19	A-49
Report of Proceedings 5/1/19	A-117
Report of Proceedings 10/23/19	A-242
Report of Proceedings 11/18/19	A-289
Diane Boyer (Direct)	A-323
Visar Belegu (Direct)	A-343
Visar Belegu (Cross)	A-363
Visar Belegu (Redirect)	A-368
Raymond Bement (Voir Dire)	A-378
Raymond Bement (Direct)	A-385
Raymond Bement (Cross)	A-408
Raymond Bement (Redirect)	A-417
Report of Proceedings, Vol. II	
Report of Proceedings 11/13/19	A-460
Administrator's Motion to Establish Identity 9/6/18	A-499
Order Granting Motion to Establish Identity 5/1/19	A-517
Circuit Court Order 11/18/19	A-518
Notice of Appeal 12/18/19	A-519
Common Law Record Table of Contents	A-521

2020 IL App (2d) 191113-U
 No. 2-19-1113
 Order filed December 22, 2020

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
 APPELLATE COURT OF ILLINOIS
 SECOND DISTRICT

In re ESTATE OF JOHN W. MCDONALD,) Appeal from the Circuit Court
 III, Deceased) of Kane County.
)
) No. 17-P-744
)
) Honorable
 (Shawn McDonald, Petitioner-Appellee v.) James R. Murphy,
 Ellizzette McDonald, Respondent-Appellant).) Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
 Justices Schostok and Birkett concurred in the judgment.

ORDER

¶1 *Held:* (1) Reviewing court would presume that the trial court properly denied respondent's motion to vacate order granting petitioner's petition for letters of administration and affidavit of heirship because the record on appeal did not contain a transcript of the hearing on respondent's motions and, in any event, respondent was provided opportunity to file her own petition for letters of administration and affidavit of heirship; (2) trial court did not abuse its discretion in denying respondent's motion to continue trial; (3) trial court did not abuse its discretion in denying respondent's motion for judgment on the pleadings; (4) trial court committed reversible error in barring respondent, pursuant to the Dead Man's Act, from testifying regarding heirship at the hearing on her petition for letters of administration and affidavit of heirship; and (5) trial court erred in granting petitioner's motion for a directed finding at the close of respondent's evidence.

¶2

I. INTRODUCTION

¶ 3 This appeal concerns the estate of decedent, John W. McDonald, III. Decedent died intestate on December 11, 2017. Four days later, petitioner, Shawn McDonald (Shawn), decedent's brother, filed in the circuit court of Kane County a petition for letters of administration and an affidavit of heirship. The circuit court appointed Shawn as the administrator of decedent's estate and declared decedent's parents and siblings as his only heirs. Respondent, Ellizzette McDonald (Ellizzette), purporting to be decedent's surviving spouse, sought to vacate the order of heirship and the order appointing Shawn as the administrator of decedent's estate. The trial court denied Ellizzette's motion but granted her leave to proceed pursuant to section 9-7 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/9-7 (West 2016)). Ellizzette then filed a petition for letters of administration, an affidavit of heirship, and a motion for judgment on the pleadings with regard to her petition for letters of administration. After the trial court denied Ellizzette's motion for judgment on the pleadings, the matter proceeded to a trial. Shawn moved for a directed finding at the close of Ellizzette's case. The trial court granted Shawn's motion, concluding that Ellizzette failed to present a *prima facie* case on the validity of her marriage to decedent. Ellizzette then filed a notice of appeal.

¶ 4 On appeal, Ellizzette raises five principal issues. First, she argues that the trial court erred when it appointed Shawn as the administrator of decedent's estate because she was not provided with statutorily-required notice. Second, she asserts that the trial court erred in denying her motion for judgment on the pleadings. Third, she contends that the trial court erred in granting Shawn's motion for a directed finding. Fourth, she argues that the trial court committed reversible error in barring her from testifying at the trial on her petition regarding her marriage and heirship. Finally, she maintains that the trial court erred in denying her motion for a continuance. For the reasons set forth below, we affirm in part, reverse in part, and remand this matter for further proceedings.

¶ 5

II. BACKGROUND

¶ 6 Decedent died intestate on December 11, 2017, in Paris, Illinois. As noted, Shawn is decedent's brother and Ellizzette purports to be decedent's surviving spouse.

¶ 7

A. Guardianship

¶ 8 On March 7, 2017, Shawn filed a petition for the appointment of a guardian for a disabled person in the circuit court of Kane County. In support of the guardianship petition, Shawn submitted a physician's report stating that decedent suffered from "bipolar disorder with manic and depressive episodes" as well as "alcohol use disorder (severe)." On May 30, 2017, the trial court entered an order declaring decedent a disabled person who "is totally without capacity" as specified in section 11a-3 of the Probate Act (755 ILCS 5/11a-3 (West 2016)) and appointing Shawn as the plenary guardian of the person and estate of decedent. The record suggests that decedent did not participate in the guardianship proceedings. When made aware of the proceedings, decedent obtained counsel and objected to the order appointing Shawn as his guardian. However, the record does not show any trial conducted on whether the guardianship should have been entered.

¶ 9

B. Petition for Letters of Administration and Affidavit of Heirship

¶ 10 On December 15, 2017, four days after decedent's death, Shawn filed in the circuit court of Kane County (1) a petition for letters of administration and (2) an affidavit of heirship. In his affidavit of heirship, Shawn asserted that decedent had been married "once and only once and then to Debbie Greene McDonald" with said marriage ending in divorce sometime prior to 2012. Shawn stated that on July 11, 2017, decedent "participated in a wedding ceremony with Ellizzette Duvall Minnicelli." Shawn claimed, however, that the marriage was void *ab initio* because decedent lacked the capacity to consent to the marriage. Therefore, Shawn requested that decedent's parents

(John W. McDonald, Jr., and Brenda K. McDonald) and his three siblings (Shawn, Heather Ladue, and Brett McDonald) be declared as decedent's heirs at law. The matter was assigned to Judge John A. Noverini. In an order bearing the handwritten date of December 18, 2017, but file stamped December 19, 2017, Judge Noverini appointed Shawn as the administrator of decedent's estate. Judge Noverini also entered an order declaring heirship, listing decedent's parents and three siblings as his only heirs. On December 22, 2017, the clerk of the circuit court issued letters of office advising of Shawn's appointment as the independent administrator of decedent's estate pursuant to the order entered by the trial court.

¶ 11 C. Petition for Declaration of Invalidity of Marriage

¶ 12 On December 22, 2017, Shawn filed a verified "Petition for Declaration of Invalidity of a Marriage" pursuant to section 301(1) of the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (750 ILCS 5/301(1) (West 2016)). The petition asserted as follows. On July 11, 2017, decedent participated in a marriage ceremony with an individual named "Ellizzette Duvall Minnicelli" in Edgar County, Illinois. Shawn first learned of the marriage ceremony when it was disclosed to him in open court on November 16, 2017, during a hearing in the guardianship case. Because decedent's person and estate were under plenary guardianship when he participated in the marriage ceremony, decedent lacked the legal capacity to consent to the marriage. At the time the marriage ceremony was performed, decedent had actual knowledge of the existence of the guardianship and was actively participating in litigation in the guardianship case. Further, at the time the marriage ceremony was performed, "Ellizzette Duvall Minnicelli" had actual knowledge of the existence of the guardianship and was actively assisting decedent in pursuing then ongoing litigation in the guardianship case. Shawn prayed for entry of an order "declaring the invalidity of the marriage of the Decedent *** to Ellizzette Duvall Minnicelli and further declaring the said

marriage to be void *ab initio*.” Attached to the petition was a copy of a “Certification of Marriage” issued by the clerk of Edgar County, Illinois. Shawn voluntarily withdrew this pleading without prejudice on March 7, 2018.

¶ 13 D. Ellizzette’s Motion to Vacate

¶ 14 Meanwhile, on January 4, 2018, counsel entered an appearance on Ellizzette’s behalf. That same day, Ellizzette filed a motion for substitution of judge as a matter of right. Ellizzette’s motion was granted, and the matter was transferred to Judge James R. Murphy.

¶ 15 On January 17, 2018, Ellizzette filed a “Motion to Vacate Order Appointing Administration and Order of Heirship.”¹ Ellizzette’s motion asserted that the order of heirship and the order appointing Shawn as administrator of decedent’s estate should be vacated because Shawn obtained letters of office and assumed control of decedent’s estate under false pretenses. Specifically, Ellizzette contended that (1) as decedent’s surviving spouse, she is decedent’s sole heir and has a superior right to act as decedent’s administrator and (2) Shawn intentionally failed to provide her notice of his petition for letters.

¶ 16 On March 7, 2018, Shawn filed his response to Ellizzette’s motion to vacate. Shawn asserted that although Ellizzette participated in a “marriage ceremony” with decedent, decedent lacked the capacity to enter into a “marriage contract” because of the guardianship. In support of his position, Shawn cited section 11a-22(b) of the Probate Act (755 ILCS 5/11a-22(b) (West 2016)). Section 11a-22(b) provides that “[e]very note, bill, bond or other contract by any person

¹ On the same date, Ellizzette filed a “Motion to Reconsider Order Appointing Administration and Order of Heirship.” The motion to reconsider was substantively identical to the motion to vacate.

for whom a plenary guardian has been appointed or who is adjudged to be unable to so contract is void against that person and his estate, but a person making a contract with the person so adjudged is bound hereby.” 755 ILCS 5/11a-22(b) (West 2016). Shawn asserted that marriage is a contract. Hence, pursuant to section 11a-22(b), the “marriage contract” entered into on July 11, 2017, between decedent and Ellizzette is void. Since the marriage is void, decedent was not married at the time of his death and his only heirs at law are his parents and siblings. Shawn did not dispute that Ellizzette was not provided notice of his petition for letters of administration. He asserted, however, that notice is only required to be served on a decedent’s heirs. Since Ellizzette is not an heir, there was no need to serve notice on her.

¶ 17 In her reply to Shawn’s response, Ellizzette argued that section 11a-22(b) of the Probate Act does not address the validity of a marriage, but rather is intended to address transactional contracts entered into by a ward. Ellizzette further asserted that her marriage to decedent enjoys a strong presumption of validity under Illinois law (see *Larson v. Larson*, 42 Ill. App. 2d 467, 472 (1963) (“When the celebration of marriage is shown, the contract of marriage, the capacity of the parties, and, in fact, everything necessary to the validity of the marriage, in the absence of proof to the contrary, will be presumed.”)) and that the guardianship over decedent did not compel the conclusion that he was unable to provide the consent to marriage because the appointment of a guardian is not sufficient, in and of itself, to show that the person was incompetent to have consent to a marriage (see *Pape v. Byrd*, 145 Ill. 2d 13, 21 (1991)). Ellizzette added that questions regarding the validity of her marriage are governed by the Marriage Act (750 ILCS 5/101 *et seq.* (West 2016)). However, section 302(b) of the Marriage Act (750 ILCS 5/302(b) (West 2016)) prohibits any attempt to invalidate a marriage after the death of either party to the marriage on the basis of one of the party’s incapacity to consent. 755 ILCS 5/302(b) (West 2016) (“In no event may a

declaration of invalidity of marriage be sought after the death of either party to the marriage under subsections (1), (2), and (3) of Section 301.”); see also 750 ILCS 5/301(1) (West 2016) (“The court shall enter its judgment declaring the invalidity of a marriage *** entered into under the following circumstances: (1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage.”). Despite his knowledge of Ellizzette’s and decedent’s marriage, Shawn failed to challenge the marriage during decedent’s lifetime and was therefore time-barred from attempting to invalidate the marriage. See 750 ILCS 5/301, 302(b) (West 2016). Thus, Ellizzette reasoned, the marriage was valid as a matter of law and she is decedent’s surviving spouse and sole heir at law.

¶ 18 On April 18, 2018, the trial court denied Ellizzette’s “motion to vacate.”² In the same order, the court granted Ellizzette leave to file a petition for appointment of administrator and an affidavit of heirship pursuant to section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)). The court directed Ellizzette to file the documents by May 2, 2018.

¶ 19 E. Ellizzette’s Petition for Letters of Administration and Shawn’s Response

² Although the trial court’s April 18, 2018, order only references the denial of Ellizzette’s motion to vacate, we conclude that it also dispensed with the motion to reconsider, which was nearly identical to the motion to vacate and raised the same substantive arguments as the motion to vacate.

¶ 20 On May 1, 2018, Ellizzette filed her petition for letters of administration and affidavit of heirship. In the filings, Ellizzette stated that she is decedent's surviving spouse. She further asserted that since decedent had no children, she is decedent's sole heir.

¶ 21 On May 25, 2018, Shawn filed his response to Ellizzette's petition for letters of administration and affidavit of heirship. In his response, Shawn argued that pursuant to section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)), Ellizzette had three months after the issuance of letters of administration to him to file her own petition for letters of administration. Shawn argued that Ellizzette's petition for letters of administration, which was filed on May 1, 2018, was untimely because it was filed more than three months after December 22, 2017, the date the letters of administration were issued to him. Shawn further asserted there is nothing in the statute allowing the court to grant an extension to file a petition for letters of administration outside the three-month window. Therefore, he argued, the court lacks jurisdiction to consider Ellizzette's petition.

¶ 22 F. Ellizzette's Motion for Judgment on the Pleadings

¶ 23 On June 7, 2018, Ellizzette filed a motion for judgment on the pleadings. Initially, Ellizzette argued that the trial court was empowered to extend the filing window for a pleading under section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)) beyond the three-month window because the language of the statute is permissive and controlling law makes clear that a party seeking to challenge an order declaring heirship is free to do so at any time during the administration of the estate or after the estate has been closed. Ellizzette also contended that since Shawn failed to deny her verified factual allegations, including that she is decedent's surviving spouse, these allegations were deemed admitted. See 735 ILCS 5/2-610 (West 2016). Alternatively, Ellizzette argued that the only basis to challenge the validity of a marriage after the death of one of the parties to the marriage is "the narrow bar against 'prohibited marriages' under

the [Marriage Act].” 750 ILCS 5/301(4) (West 2016); 750 ILCS 5/212 (West 2016). Ellizzette requested full judgment on the pleadings in her favor, or, alternatively “partial judgment on the pleadings in [her] favor *** limiting discovery and hearing on the Petition to the narrow issue of whether the Decedent’s marriage to [her] constitutes a ‘prohibited marriage’ under the [Marriage Act].”

¶ 24 On July 3, 2018, Shawn filed a response to Ellizzette’s motion for judgment on the pleadings. Shawn reiterated his position that section 11a-22(b) of the Probate Act (755 ILCS 5/11a-22(b) (West 2016)) bars any contract, including one for marriage, entered into by someone such as decedent for whom a plenary guardian had been appointed. Thus, he concluded, any marriage contract between Ellizzette and decedent was void. Shawn further contended that judgment on the pleadings was inappropriate because there remains a factual issue regarding whether the alleged marriage between Ellizzette and decedent was valid. See *In re Estate of Davis*, 225 Ill. App. 3d 998, 1000 (1992).

¶ 25 On September 10, 2018, the trial court denied Ellizzette’s motion for judgment on the pleadings as “premature.”

¶ 26 G. Shawn’s Motion for Judicial Notice

¶ 27 On October 2, 2018, Shawn filed a motion requesting the trial court to take judicial notice of the “Certified Copy of Edgar County, Illinois Marriage Application and Record of [decedent] and Ellizzette Duvall Minicelli [*sic*].” Shawn attached three documents to his motion: (1) a certified copy of a “Certification of Marriage” between decedent and “Ellizzette Duvall Minnicelli” issued by the clerk of Edgar County, Illinois; (2) a certified copy of a “Marriage License” between decedent and “Ellizzette Duvall Minnicelli” issued by the clerk of Edgar County, Illinois; and (3) a certified copy of a “Marriage Application and Record” issued by the

clerk of Edgar County, Illinois. On November 30, 2018, the trial court entered an order granting Shawn's motion for judicial notice.

¶ 28 On April 15, 2019, the trial court entered an order setting the matter for trial over several dates beginning on November 18, 2019.

¶ 29 H. Ellizzette's Counsel's Motion to Withdraw

¶ 30 On September 12, 2019, Ellizzette's counsel moved to withdraw. The trial court granted counsel's motion in an order dated September 18, 2019. The same order further provided that (1) Ellizzette shall have 21 days "to find other counsel and/or file a [s]ubstitute [a]ppearance;" (2) the scheduled November 18, 2019, trial date would stand; and (3) all pending motions and status of counsel would be continued to October 23, 2019.

¶ 31 I. Shawn's Motion *In Limine*

¶ 32 On October 16, 2019, Shawn filed a "Motion *In Limine*" seeking to bar Ellizzette from testifying or presenting any evidence as to any marital relationship she had with decedent at the trial on her petition to establish heirship. Citing *Laurence v. Laurence*, 164 Ill. 367 (1896), *In re Estate of Diak*, 70 Ill. App. 2d 1 (1966), and *In re Estate of Enoch*, 52 Ill. App. 2d 39 (1964), Shawn alleged that the admission of such testimony would violate the Dead Man's Act (735 ILCS 5/8-201 (West 2016)).

¶ 33 On October 23, 2019, Ellizzette filed an appearance on her own behalf. A week later, Ellizzette filed a response to Shawn's motion *in limine*. Ellizzette argued, *inter alia*, that the "plain text" of section 8-201(d) of the Dead Man's Act provides that "[n]o person shall be barred from testifying as to any fact relating to the heirship of the decedent." 735 ILCS 5/8-201(d) (West 2016). Ellizzette contended that because her testimony would "relate to facts surrounding the heirship of [decedent], this testimony falls precisely within the exception carved out within the Dead Man's

Act itself.” Ellizzette therefore contended that her testimony as to her marriage to decedent, which would directly relate to heirship, should not be barred.

¶ 34 On November 13, 2019, following oral argument by the parties, the trial court granted Shawn’s motion *in limine*. The court explained that “Illinois law says that the spouse cannot testify as to heirship, and there’s cases cited, and they weren’t responded to.” That same day the trial court entered a written order in accordance with its oral finding, granting Shawn’s motion *in limine* and barring Ellizzette from “testifying regarding her putative marriage to the decedent or regarding the decedent’s heirship.”

¶ 35 J. Ellizzette’s Motion for Continuance

¶ 36 At the hearing on November 13, 2019, the court asked Ellizzette if she would be ready for trial on November 18, 2019. Ellizzette responded that she would not be ready but stated that she was aware that “that’s the date” and that she was “not looking to *** waste the Court’s time.” She further informed the court that she would be present on November 18 “if [she is] expected to be [in court].”

¶ 37 At 3:49 a.m. on November 18, 2019, Ellizzette filed a “Motion for Continuance” seeking to continue the trial to December 3, 2019, or later. In the motion, Ellizzette alleged that she had good cause for requesting an extension because (1) her father had been hospitalized in Arizona and declared “end of life,” (2) her mother, who she categorized as a “key witness,” would be unable to attend the trial due to the status of Ellizzette’s father; (3) Ellizzette’s attorneys withdrew from the case due to the “high outstanding balance” of attorney fees which Ellizzette was unable to pay because she was involved in an automobile accident that resulted in significant out-of-pocket medical expenses; and (4) Ellizzette was unable to obtain the testimony of two key witnesses. Ellizzette also asserted that she had paid the outstanding balance owed to her prior attorneys and

requested that they be allowed to re-enter an appearance on her behalf. The trial court denied the motion for continuance.

¶ 38

K. Trial

¶ 39 The matter proceeded to trial on Ellizzette's petition, with the evidence centered on the validity of Ellizzette's marriage to decedent. In accordance with the trial court's ruling on Shawn's motion *in limine*, Ellizzette did not testify. However, Ellizzette called three witnesses in her case-in-chief: Diane Boyer, Dr. Visar Belegu, and Ray Bement.

¶ 40 Boyer testified that she was involved in the preparations for Ellizzette's and decedent's marriage and observed Ellizzette and decedent interacting with each other every week in 2017. Boyer also opined that Ellizzette and decedent were happily living together.

¶ 41 Dr. Belegu, a colleague of decedent, testified that he was aware that Ellizzette and decedent had married. Dr. Belegu further testified that he had contact with decedent two or three times a week in 2017. In Dr. Belegu's opinion, decedent was happily married. On cross-examination, Dr. Belegu testified that he was not present at any marriage ceremony between Ellizzette and decedent and that he is not aware of any witnesses to the marriage.

¶ 42 Bement testified that he met Ellizzette and decedent in 1982. In 2017, Bement learned that Ellizzette and decedent were engaged. Bement participated in preparations for a marriage ceremony between Ellizzette and decedent. To that end, on July 11, 2017, Bement performed Ellizzette's and decedent's marriage ceremony in the participants' home in Paris, Edgar County, Illinois. Bement further testified that he signed the marriage certificate in the kitchen of Ellizzette's and decedent's home in Paris. After Bement signed the marriage certificate, he, Ellizzette, and decedent went to Allerton Park in Monticello (Piatt County) for an additional "more secular" ceremony. Bement also stated that he attended a Ketubah signing on July 10, 2017, at Ellizzette's

and decedent's home in Paris. Bement explained that a Ketubah is "like what Christians would call a marriage license" and states what each party will bring to the relationship. Following the marriage, Bement interacted with Ellizzette and decedent on professional and personal bases.

¶ 43 On cross-examination, Bement testified that it was his idea to be the officiant at the marriage ceremony of Ellizzette and decedent. He obtained a certificate to become an officiant from an online ministry in a process that took between 5 and 10 minutes. The following exchange then ensued between Shawn's attorney, Bement, Ellizzette, and the trial court:

"Q. And the marriage ceremony, as you testified on direct, the secular marriage ceremony was conducted in Piatt County; is that a fair statement?

A. Yes.

* * *

[Ellizzette]: Objection, Your Honor. Mr. Bement also testified earlier that he performed a marriage ceremony at our home in Paris.

MR. KINNALLY [Shawn's Attorney]: His testimony according to my notes was that the secular part of the marriage was conducted in Piatt County. That's what he testified to.

THE COURT: All right. You'll be able to redirect questions, so overruled."

Bement further testified that the only people that were present for the Piatt County ceremony were decedent and Ellizzette.

¶ 44 On redirect examination, Bement reiterated that he signed the marriage certificate in the kitchen of Ellizzette's and decedent's house in Paris, Edgar County, Illinois.

¶ 45 Following Bement's testimony, Ellizzette stated that she had no other witnesses. Shawn's counsel then orally moved for a directed finding on the issue of the validity of the marriage.

Counsel advanced several grounds for his position. First, he asserted that the best evidence of the existence of a marriage is the marriage certificate itself, but “[t]hey haven’t produced any documents with respect to that.” Second, counsel asserted that “[t]he case law in Illinois” requires two witnesses to a marriage, but Bement “conducted a secular proceeding in Piatt County apparently with no witnesses.” Third, counsel posited that before a marriage where one of the participants is a ward of the court, the Probate Act requires the court to conduct a best-interest hearing. Counsel noted that although decedent was a ward of the court, no hearing was ever held to determine if the marriage was in decedent’s best interest. Fourth, counsel maintained that marriage is a “civil contract,” and the Probate Act prohibits a ward of the court from entering into a contract with any other person. Accordingly, Shawn requested that the trial court dismiss Ellizzette’s claim that she is decedent’s heir.

¶ 46 Ellizzette responded that she and decedent “followed the rules according to the Edgar County circuit clerk.” Specifically, they “produced the documentation [they] were required to produce,” “filled out the application,” and “waited for [the circuit clerk] to contact [them] and tell [them] that [their] marriage application for a license had been granted.” Subsequently, Ellizzette and decedent “had an interfaith marriage ceremony in Edgar County, Illinois, in Paris, in [her] home” and “a religious celebration in Monticello.”

¶ 47 In reply, Shawn’s counsel asserted that Ellizzette did not refute any of the arguments he previously made with respect to the validity of the marriage. Counsel further stated that if Ellizzette wanted to prove the validity of her purported marriage to decedent:

“[A]ll [she] had to do is prove the marriage certificate, and the reason [she] didn’t is because [she] know[s] [she] can’t. [She] didn’t bring the marriage certificate in here.

[She] didn't bring the application. [She] didn't bring the license in here. You should ask yourself why [she] didn't do that."

Ellizzette responded that, prior to Attorney Kinnally's involvement in the case, her attorney produced a marriage license application and marriage certificate and an individual "came to the Court to represent that she had issued the marriage certificate license in Edgar County."

¶ 48 L. Trial Court's Ruling on the Motion for a Directed Finding

¶ 49 The trial court granted Shawn's motion for a directed finding. The court ruled that to present a *prima facie* case on the validity of her marriage to decedent, Ellizzette had to present a valid application for a marriage license and a ceremony performed in Edgar County witnessed by two individuals. The court found, as a matter of law, that Ellizzette "did not present a *prima facie* case of a valid marriage ceremony under the circumstances such as would be sufficient to meet her burden of proof on all of the elements." The court stated that "[i]t would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done." In ruling, the court further stated:

"And while it is not as clear as Mr. Kinnally presents as to the case law precedents—and in that I'm referring to the arguments that [Ellizzette] had when she was represented by counsel during motion practice on a motion for judgment on the pleadings—it is clear that there was an order finding and adjudicating Decedent as a disabled person and in immediate need of a plenary guardianship and that there was no best-interest hearing held; that the punitive [*sic*] marriage was not known to the Administrator until November 2017; and that the marriage was not properly witnessed or licensed or subject to a best-interest determination by the probate court."

The trial court made a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. March 8, 2016) that there was no just reason to delay appeal. On December 18, 2019, Ellizzette filed a notice of appeal.

¶ 50

II. ANALYSIS

¶ 51 On appeal, Ellizzette raises five principal issues, which we address as follows. First, she argues that the trial court erred when it appointed Shawn as the administrator of decedent's estate because she was not provided with the statutorily-required notice. Second, she maintains that the trial court erred in denying her motion for a continuance. Third, she asserts that the trial court erred in denying her motion for judgment on the pleadings. Fourth, she argues that the trial court committed reversible error in barring her from testifying at the trial on her petition regarding her marriage and heirship. Finally, she contends that the trial court erred in granting Shawn's motion for a directed finding.

¶ 52

A. Notice

¶ 53 As her initial assignment of error, Ellizzette contends that the trial court erred "when it granted Shawn's petition [for letters of administration and affidavit of heirship] without any notice to [her], declared that [she] is not [decedent's] heir, and thus necessarily declared their marriage invalid." Ellizzette has failed to provide an adequate record to address this claim.

¶ 54 As noted above, on December 19, 2017, the trial court entered an order declaring heirship and appointing Shawn as the administrator of decedent's estate. That order states that "due notice has been given to all parties according to law." On January 17, 2018, Ellizzette filed her motion to vacate the order appointing administration and the order of heirship. The arguments in Ellizzette's motions and her reply to Shawn's responses thereto are nearly identical to the arguments she now raises on appeal and are grounded on the premise that she was not provided the statutorily-required

notice. Shawn did not dispute that Ellizzette was not provided notice of his petition for letters of administration, but argued that notice to Ellizzette was not required because she was not decedent's heir. The trial court held a hearing on the motions on April 18, 2018, and denied the motion to vacate the same day.

¶ 55 Although not captioned as such, Ellizzette's argument is essentially a challenge to the trial court's denial of her motion to vacate the order granting Shawn's petition for letters of administration and affidavit of heirship. However, our ability to review this issue for error is hampered by the lack of a transcript from the April 18, 2018, hearing on Ellizzette's motion or an acceptable substitute (See Ill. S. Ct. R. 323 (eff. July 1, 2017) (allowing for a bystander's report or agreed statement of facts). As appellant, Ellizzette has the burden to present this court with a sufficiently complete record on appeal. *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d 414, 422 (2009); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). As our supreme court has stated, "[a]n issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." (Internal quotation marks omitted.) *In re Marriage of Gulla*, 234 Ill. 2d at 422; see also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) (stating that any issue relating to the court's factual findings and the basis for its legal conclusions cannot be reviewed without a record of that proceeding). Accordingly, absent an adequate record preserving the claimed error, a reviewing court must presume the circuit court had a sufficient factual basis for its action and that it conforms to the law. *In re Marriage of Gulla*, 234 Ill. 2d at 422; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Accordingly, we presume that the trial court's ruling on the motion to vacate conformed to the law.

¶ 56 We also observe that, despite the trial court's decision to deny Ellizzette's motion to vacate, it entered an order allowing her to file a petition for letters of administration and affidavit of heirship pursuant to section 9-7 of the Probate Act (755 ILCS 5/9-7 (West 2016)). In fact, Ellizzette filed a petition for letters of administration and affidavit of heirship, asserting that she is decedent's surviving spouse and sole heir. The trial court held a hearing on Ellizzette's pleadings. Thus, Ellizzette was given an opportunity to address her claim that she is decedent's sole surviving spouse and only heir. Given these circumstances, we fail to see how Ellizzette was prejudiced by any lack of notice.

¶ 57 **B. Continuance**

¶ 58 Ellizzette also claims that the trial court erred in denying her motion for a continuance made on the day of trial. To place Ellizzette's argument in context, we briefly review the circumstances surrounding the motion.

¶ 59 On April 15, 2019, the trial court entered an order setting the matter for trial on November 18, 2019. On September 12, 2019, Ellizzette's counsel moved to withdraw. The trial court granted counsel's motion in an order dated September 18, 2019. The September 18, 2019, order also (1) granted Ellizzette 21 days "to find other counsel and/or file a Substitute Appearance;" (2) provided that the November 18, 2019, trial date would stand; and (3) continued the matter to October 23, 2019, on all pending motions and status of counsel. At the hearing on October 23, 2019, Ellizzette filed an appearance on her own behalf. During that hearing, the matter was continued to November 13, 2019.

¶ 60 At the hearing on November 13, 2019, Ellizzette informed the court that she intended to call several witnesses at the trial on November 18, including her mother, Patrick Rummerfield, Dr. Belegu, Eric Westacott, and Bement. Ellizzette stated that she would not be calling her father

“because of his illness.” She also stated that “[t]hree days ago,” *i.e.*, November 10, 2019, her father had been declared “end of life” and that he “could die at any day now per the doctors.” Prior to the conclusion of the hearing on November 13, the following colloquy took place between the trial court and Ellizzette:

“THE COURT: Are we ready to go? Are you ready to go then on Monday morning [November 18] at 9:00 with your witnesses?

[Ellizzette]: “Um, I would—to answer your question right now, no. I’m not ready at this moment, Your Honor. I’m telling you the truth. I’m not ready at this moment because of some of those things. I don’t want to—but I do know that’s the date, and I’m not looking to—again, I’m not looking to, um waste the Court’s time.”

THE COURT: But you are going to be here on Monday then—

[Ellizzette]: Yes, sir.

THE COURT: —to proceed?

[Ellizzette]: Oh, I will be here if I’m expected to be here, Your Honor.”

¶ 61 At 3:49 a.m. on November 18, 2019, Ellizzette filed a “Motion for Continuance” seeking to continue the trial to December 3, 2019, or later. In the motion, Ellizzette alleged that she had good cause for requesting an extension because: (1) her father had been hospitalized in Arizona and declared “ ‘end of life’ Saturday, December 16, 2019 [*sic*];” (2) her mother, who Ellizzette described as a “key witness,” would be unable to attend the trial due to the health status of her husband; (3) her attorneys withdrew from the case due to the “high outstanding balance” of fees which Ellizzette was unable to pay because she was involved in an automobile accident that resulted in significant out-of-pocket medical expenses; (4) she was unable to obtain the testimony of two “primary witnesses,” Rummerfield and Westacott; and (5) she was unable to “liase with

her Counsel and take up *Pro Se* representation within the 60-day trial window” given “the substantial health limitations over the past several months.” Ellizzette also represented that she had reconciled the outstanding balance owed to her prior attorneys and requested that they be allowed to re-enter an appearance on her behalf.

¶ 62 At a hearing on November 18, 2019, the trial court, after hearing argument from the parties, denied the motion for continuance. The court cited (1) a lack of due diligence on Ellizzette’s part in presenting the motion or obtaining the testimony of Rummerfield and Westacott and (2) Ellizzette’s failure to show that the testimony of the witnesses referenced in her motion would be material to the issues in the case. In response to Ellizzette’s concern regarding her father’s health, the court stated, “If you have another reason for a continuance during the trial, then you’ll bring it up at that point.” The court then asked Ellizzette if she were prepared to proceed. Ellizzette responded that she “would like to proceed with the provision that, God forbid something happens, the court would consider an emergency.”

¶ 63 A litigant does not have an absolute right to a continuance. *In re Marriage of LaRoque*, 2018 IL App (2d) 160973, ¶ 94. Continuances are within the sound discretion of the trial court. *Doe v. Parrillo*, 2020 IL App (1st) 191286, ¶ 39; see also 735 ILCS 5/2-1007 (West 2016) (providing that “[o]n good cause shown, in the discretion of the court and on just terms, additional time may be granted for the doing of any act or the taking of any step or proceeding prior to judgment”). A critical factor in the review of such rulings is whether the moving party has exercised due diligence in proceeding with the case. *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007). Moreover, once a cause has been reached for trial, a motion for continuance should show sufficient excuse for the delay and the movant should present especially grave reasons to support his or her request. Ill. S. Ct. R. 231(f) (eff. Jan. 1, 1970) (“No motion for the continuance of a

cause made after the cause has been reached for trial shall be heard, unless a sufficient excuse is shown for the delay.”); *Teitelbaum v. Reliable Welding Co.*, 106 Ill. App. 3d 651, 656 (1982) (“The moving party must give especially grave reasons for continuance once a case has reached the trial stage because of the potential inconvenience to the witnesses, the parties and to the court.”). The decision to grant or deny a trial continuance will not be disturbed on appeal “unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion.” *Doe*, 2020 IL App (1st) 191286, ¶ 39. An abuse of discretion occurs where the trial court’s decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would agree with the position taken by the trial court. *Control Solutions, LLC v. Elecsys*, 2014 IL App (2d) 120251, ¶ 38.

¶ 64 Ellizzette argues that the trial court erred when it denied her motion for continuance made on the day of trial. In her motion, Ellizzette cited five principal reasons for requesting a continuance. On appeal, however, Ellizzette focuses on just two of those reasons—her father’s illness and her attorneys’ withdrawal. Ellizzette’s failure to argue the three remaining grounds set forth in her motion results in forfeiture of those bases on appeal. See Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018) (providing that points not argued are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing); *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23 (holding that an appellant’s failure to argue a point in the opening brief results in forfeiture). Moreover, after reviewing the record, we find nothing that would justify a conclusion that the trial court abused its discretion in denying her motion for a continuance on either of the two bases she advances in this appeal.

¶ 65 With respect to her father’s illness, Ellizzette asserted at the hearing on her motion that her father had been hospitalized and declared “end of life” on November 16, 2019, just two days

earlier.³ However, this statement is contradicted by an affirmation Ellizzette previously made to the trial court. Notably, at the hearing on November 13, 2019, Ellizzette told the court that three days prior, *i.e.*, November 10, 2019, her father had been declared “end of life” and that he “could die at any day now per the doctors.” Ellizzette could have moved for a continuance at that time but did not. To the contrary, she informed the trial court at the November 13, 2019, hearing that she did not want to waste the court’s time and that she would be present for the hearing on November 18, 2019. She then waited until 3:49 a.m. on the day of trial to inform the court that she had changed her mind and wanted to have the trial postponed. Given these circumstances, the trial court could reasonably conclude that Ellizzette did not show due diligence in waiting until the day of trial to file her motion for a continuance. Therefore, the trial court did not abuse its discretion in failing to grant the motion on this basis.

¶ 66 Ellizzette also argues that the withdrawal of her attorneys before trial “placed her in a difficult position, which she sought to remedy by obtaining counsel who *** could have refuted the fundamentally flawed legal arguments Shawn presented.” In addressing this issue, *Thomas v. Thomas*, 23 Ill. App. 3d 936 (1974) is instructive. In that case, the plaintiff’s attorney moved to withdraw from the case, serving notice of his intention on July 5, 1973. The plaintiff appeared at a hearing on July 12, at which the trial court advised her that she should obtain counsel for the trial scheduled for July 17, but that she could file for a continuance if she felt she would need more

³ In her November 18, 2019, motion, Ellizzette represented that her father had been declared “ ‘end of life’ Saturday, December 16, 2019.” We presume that Ellizzette meant to state that her father was declared “end of life” on Saturday, November 16, 2019, and not on some future date.

time. The plaintiff indicated that she would have counsel for trial and no continuance was requested. On July 17, for the first time, the plaintiff moved for a continuance because she lacked counsel. The trial court denied the motion. In affirming, the reviewing court observed that the absence of counsel is one factor to consider in deciding a motion to continue, but “it does not entitle a party to a continuance as a matter of right.” *Thomas*, 23 Ill. App. 3d at 940-941 (citing *Adcock v. Adcock*, 339 Ill. App. 543, 548 (1950)). The court determined that the lack of counsel “could have been avoided by [the plaintiff’s] own diligence in either securing a lawyer for trial, or requesting a continuance prior to the day of trial.” *Thomas*, 23 Ill. App. 3d at 940. The court further determined that the 12 days between when counsel served notice of his intent to withdraw and the date of the trial provided the plaintiff with “ample opportunity to extend the time for trial in order to obtain counsel.” *Thomas*, 23 Ill. App. 3d at 940-941. Accordingly, the reviewing court concluded that the trial court properly exercised its judicial discretion in denying the motion for a continuance. *Thomas*, 23 Ill. App. 3d at 940-941.

¶ 67 In the present case, Ellizzette had substantially more time to request a continuance to obtain substitute counsel than the period of time involved in *Thomas*. In this regard, we note that Ellizzette’s counsel moved to withdraw on September 12, 2019. The motion indicates that Ellizzette was notified by both e-mail and by certified mail to her last known addresses. The trial court entered an order on September 18, 2019, granting the motion to withdraw, providing Ellizzette with 21 days to find other counsel and file a substitute appearance and confirming the scheduled trial date of November 18, 2019. Ellizzette was provided notice of the order granting the withdrawal by certified mail at the same addresses to which the motion to withdraw was sent. The record reflects that Ellizzette did not take any action until October 23, 2019, when she filed an appearance on her own behalf. Further, at no time between October 23 and November 18, 2019,

did Ellizzette move the court to retain substitute counsel. In other words, Ellizzette had 68 days between when counsel served notice of his intent to withdraw and the date of the trial to secure counsel or request a continuance. Yet, she did not take any action until the day of trial. Given these circumstances, the trial court could reasonably conclude that Ellizzette did not show due diligence in waiting until the day of trial to file her motion for a continuance. Therefore, the trial court did not abuse its discretion in failing to grant the motion on this basis.

¶ 68 In short, there was sufficient time for Ellizzette to appear before the court to present a motion for continuance prior to the date of trial. Ellizzette, however, waited until the day of trial to move for a continuance. Under these circumstances, the trial court could have reasonably concluded that Ellizzette failed to show due diligence in pursuing her motion for a continuance. Accordingly, the trial court did not abuse its discretion in denying Ellizzette's motion for a continuance filed on the day of trial.

¶ 69 C. Judgment on the Pleadings

¶ 70 Next, Ellizzette argues that the trial court erred when it denied her motion for judgment on the pleadings. Section 2-615(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2016)) provides that “[a]ny party may seasonably move for judgment on the pleadings.” A motion for judgment on the pleadings is like a motion for summary judgment but is limited to the pleadings. *Perry v. Fidelity National Title Insurance Co.*, 2015 IL App (2d) 150168, ¶ 9. Thus, a judgment on the pleadings is proper only when the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005); *St. Paul Fire & Marine Insurance Co. v. City of Waukegan*, 2017 IL App (2d) 160381, ¶ 25. In ruling on a motion for judgment on the pleadings, the court considers only those facts apparent from the face of the pleadings, matters

subject to judicial notice, and judicial admissions in the record. *Gillen*, 215 Ill. 2d at 385; *St. Paul Fire & Marine Insurance Co.*, 2017 IL App (2d) 160381, ¶ 25. A party moving for judgment on the pleadings concedes the truth of the well-pled facts in the nonmovant's pleadings. *Allstate Property & Casualty Insurance Co. v. Trujillo*, 2014 IL App (1st) 123419, ¶ 16. The court deciding the motion must take all reasonable inferences from those facts as true, disregard all conclusory allegations and surplusage, and construe the evidence strictly against the movant. *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 442 (2010). We review *de novo* a trial court's ruling on a motion for judgment on the pleadings. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶ 65.

¶ 71 Ellizette contends that the facts apparent from the face of the pleadings and the judicial admissions of Shawn establish that she was entitled to judgment on the pleadings without the need for a trial. Specifically, Ellizette asserts that in her petition for letters of administration and affidavit of heirship, she pleaded that she is decedent's surviving spouse and his sole heir. Ellizette further asserts that Shawn failed to deny these allegations in his response to her pleadings, and, as a result, the allegations in her pleadings must be taken as true. See 735 ILCS 5/2-610(b) (West 2016) ("Every allegation *** not explicitly denied [in an answer] is admitted."). As additional support for her position, Ellizette asserts that Shawn, in his verified petition for declaration of invalidity of marriage, admitted that she and decedent "participated in a marriage ceremony" on July 11, 2017, and attached thereto a copy of the certification of marriage. Ellizette acknowledges that Shawn later filed a notice that he was voluntarily withdrawing his petition for declaration of invalidity of marriage, but contends that Shawn remained bound thereby because he did not allege that these "judicial admissions *** were the result [of] mistake or inadvertence." See *In re Marriage of O'Brien*, 247 Ill. App. 3d 745, 748 (1993). Ellizette concludes that because

Shawn's response to her petition for letters of administration and affidavit of heirship "did not set up a defense that would entitle him to a merits hearing," the trial court erred when it denied her motion for judgment on the pleadings. We disagree.

¶ 72 As noted above, in ruling on a motion for judgment on the pleadings, the court considers the facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Gillen*, 215 Ill. 2d at 385; *St. Paul Fire & Marine Insurance Co.*, 2017 IL App (2d) 160381, ¶ 25. Illinois courts recognize that documents containing readily verifiable facts from sources of indisputable accuracy may be judicially noticed. *People v. Davis*, 65 Ill. 2d 157, 165 (1976); *Centeno v. Illinois Workers' Compensation Comm'n*, 2020 IL App (2d) 180815WC, ¶ 39; *City of Centralia v. Garland*, 2019 IL App (5th) 180439, ¶ 10. Public documents that are included in the records of courts and administrative tribunals are subject to judicial notice. *People v. Ernest*, 141 Ill. 2d 412, 428 (1990); *Centeno*, 2020 IL App (2d) 180815WC, ¶ 39; *Palos Bank & Trust Co. v. Illinois Property Tax Appeal Board*, 2015 IL App (1st) 143324, ¶ 11 n.2.; *People v. Rubalcava*, 2013 IL App (2d) 120396, ¶ 31; *Curtis v. Lofy*, 394 Ill. App. 3d 170, 172 (2009); *NBD Highland Park Bank, N.A. v. Wien*, 251 Ill. App. 3d 512, 520-21 (1993); *In re McDonald*, 144 Ill. App. 3d 1082, 1085 (1986).

¶ 73 Ellizzette's position ignores that the trial court was entitled to take judicial notice of its own files and records. See *Palos Bank & Trust Co.*, 2015 IL App (1st) 143324, ¶ 11 n.2. Likewise, this court may take judicial notice of the trial court's file. *People v. Fields*, 2020 IL App (1st) 151735, ¶ 58; *People v. Alvarez-Garcia*, 395 Ill. App. 3d 719, 726-27 (2009). In this case, the trial court's file demonstrates that in December 2017, Shawn filed a petition for letters of administration and affidavit of heirship. In the affidavit of heirship, Shawn stated as follows. He was appointed plenary guardian of the person and estate of decedent on May 30, 2017. Decedent was survived by

his parents and his three siblings. Decedent had been married “once and only once and then to Debbie Greene McDonald” with said marriage ending in divorce sometime prior to 2012. Although decedent “participated in a wedding ceremony with Ellizzette Duvall Minnicelli” on July 11, 2017, the marriage was void *ab initio* because decedent lacked the capacity to consent to the marriage. The trial court’s file further demonstrates that on December 19, 2017, the trial court entered (1) an order appointing Shawn as the independent administrator of decedent’s estate and (2) an order declaring heirship, which designated decedent’s parents and three siblings as his only heirs. The facts that decedent’s parents and his three siblings were *named* as his only heirs and that Shawn was appointed as the independent administrator of decedent’s estate were subject to judicial notice as they were readily verifiable. See *In re Linda B.*, 2017 IL 119392, ¶ 31 n.7 (“Public documents, such as those included in the records of other courts and administrative tribunals, fall within the category of ‘readily verifiable’ facts capable of instant and unquestionable demonstration of which a court may take judicial notice.’ ”); *Centeno*, 2020 IL App (2d) 180851WC, ¶ 39 (holding that the Illinois Workers’ Compensation Commission properly considered arbitrator decision and transcript from another case as such information was “readily verifiable and aided in the efficient disposition of the case.”). Accordingly, considering the facts apparent from the face of the pleadings, matters subject to judicial notice, and any judicial admissions, the record shows that there remained a genuine issue of material fact as to Ellizzette’s status as decedent’s surviving spouse and sole heir. See *In re Estate of Davis*, 225 Ill. App. 3d at 1000 (“On a motion for judgment on the pleadings, if the pleadings put in issue one or more material facts, evidence must be taken to resolve such issues, and judgment may not be entered on the pleadings.”). In light of the foregoing, we therefore conclude that the trial court did not err in denying Ellizzette’s motion for judgment on the pleadings.

¶ 74

D. Dead Man's Act

¶ 75 Ellizzette next argues that the trial court committed reversible error in granting Shawn's motion *in limine*, which barred her from testifying under the Dead Man's Act (735 ILCS 5/8-201 (West 2016)) as to her marriage and heirship.

¶ 76 As noted above, Shawn filed a motion *in limine* seeking to bar Ellizzette from testifying or presenting any evidence as to any marital relationship she allegedly had with decedent at the trial on her petition for letters of administration and affidavit of heirship. Citing *Laurence v. Laurence*, 164 Ill. 367 (1896), *In re Estate of Diak*, 70 Ill. App. 2d 1 (1966), and *In re Estate of Enoch*, 52 Ill. App. 2d 39 (1964), Shawn alleged that such testimony would violate the Dead Man's Act (735 ILCS 5/8-201 (West 2016)). In her response to Shawn's motion, Ellizzette argued, *inter alia*, that the "plain text" of subsection (d) of the Dead Man's Act provides that "[n]o person shall be barred from testifying as to any fact relating to the heirship of the decedent." 735 ILCS 5/8-201(d) (West 2016). Ellizzette contended that because her testimony would "relate to facts surrounding the heirship of [decedent], this testimony falls precisely within the exception carved out within the Dead Man's Act itself." Therefore, Ellizzette urged the trial court to deny Shawn's motion. Following argument on the motion by the parties, the trial court granted Shawn's motion. The court reasoned that "Illinois law says that the spouse cannot testify as to heirship, and there's cases cited, and they weren't responded to." Thereafter, the trial court entered a written order in accordance with its oral finding, barring Ellizzette from "testifying regarding her putative marriage to the decedent or regarding the decedent's heirship."

¶ 77 On appeal, Ellizzette, relying principally on *In re Estate of Bailey*, 97 Ill. App. 3d 781 (1981), argues that the legislature expressly enacted subsection (d) of the Dead Man's Act (735 ILCS 5/8-201(d) (West 2016)) to overrule the authority cited by Shawn in his motion *in limine*.

She therefore contends that the trial court committed reversible error in barring her from testifying about her marriage and heirship. Shawn responds that the trial court's decision to grant his motion *in limine* was proper because it relied on Illinois Supreme Court precedent, *Laurence*, 164 Ill. 367 (1896), which remains good law and prohibits a spouse from testifying in an heirship proceeding. Further, Shawn maintains that even if it was improper for the trial court to bar Ellizzette from testifying, she failed to preserve the issue for review by making an offer of proof as to her testimony. We review evidentiary rulings for an abuse of discretion, but interpretations of statutes *de novo*. See *Gunn v. Sobucki*, 216 Ill. 2d 602, 609 (2005). Additionally, a trial court's ruling on an issue involving the Dead-Man's Act will not be reversed unless the error was substantially prejudicial and affected the outcome of the trial. *People v. \$5,608 United States Currency*, 359 Ill. App. 3d 891, 895 (2005).

¶ 78 We begin our analysis with a review of *Laurence*, 164 Ill. 367. In that case, the decedent died intestate. The plaintiff, the decedent's putative wife, petitioned the court for half of the decedent's estate. The trial court allowed the plaintiff to testify at trial as to her alleged marriage to the decedent. After considering the evidence presented at the trial, the court concluded that the plaintiff was the lawful widow of the decedent and was therefore entitled to share in his estate. On appeal, the defendants argued that the trial court erred in permitting the plaintiff to testify on her own behalf. In support of their position, the defendants relied on section 2 of the Evidence and Depositions Act (Ill. Rev. Stat. 1896, ch. 51, ¶ 2), commonly referred to as the Dead Man's Act (see Adrienne D. Whitehead, *New Life to the Dead Man's Act in Illinois*, 5 Loy. U. Chi. L.J. 428 (1974)). At the time of the *Laurence* decision, the statute provided:

“[N]o party to any civil action, suit or proceeding, or person directly interested in the event thereof, should be allowed to testify therein of his own motion or in his own

behalf, by virtue of the foregoing section, when any adverse party sues or defends as the heir of any deceased person, except when called as a witness by such adverse party so suing or defending.” *Laurence*, 164 Ill. at 372 (citing Ill. Rev. Stat. 1896, ch. 51, ¶ 2).

The supreme court reversed and remanded the matter, holding that the plaintiff’s testimony should have been excluded. *Laurence*, 164 Ill. at 373. The court explained that the plaintiff “was not an heir until she established the marriage which she alleged and which was denied by the heirs, and until such marriage was established by proof or conceded she was a stranger to the estate and incompetent to testify; and the court erred in permitting her to do so.” *Laurence*, 164 Ill. at 373.

¶ 79 In 1973, the Dead Man’s Act as it then existed, was repealed and replaced. *In re Estate of Babcock*, 105 Ill. 2d 267, 272 (1985); Adrienne D. Whitehead, *New Life to the Dead Man’s Act in Illinois*, 5 Loy. U. Chi. L.J. 428 (1974). In its current form, the Dead Man’s Act reads in pertinent part as follows:

“In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, except in the following instances:

(d) No person shall be barred from testifying as to any fact relating to the heirship of a decedent.” 735 ILCS 5/8-201 (West 2016).

As the *Babcock* court noted, the successor version of the Dead Man’s Act is less restrictive than the prior version of the statute. *In re Estate of Babcock*, 105 Ill. 2d at 272. The *Babcock* court explained:

“The successor act *** no longer bars all testimony by interested persons. Unlike the previous statute, the Act now disqualifies the testimony by interested persons only to the extent that the testimony would be to a ‘conversation with the deceased [or person under legal disability] or an ‘event which took place in the presence of the deceased [or person with a legal disability].’ ” *In re Estate of Babcock*, 105 Ill. 2d at 273.

We also observe that the successor statute provides several exceptions to its applicability, including subsection (d) (735 ILCS 5/8-201(d) (West 2016)), which is at issue in this case.

¶ 80 In *In re Estate of Bailey*, 97 Ill. App. 3d 781 (1981), the court had an opportunity to consider the effect of subsection (d). In that case, the petitioner, the putative wife of the decedent, brought an action to vacate the respondent’s appointment as administrator of the decedent’s estate. At the trial on the matter, the respondent objected to the petitioner testifying about her marriage to the decedent. The respondent asserted that such testimony was barred by the Dead Man’s Act since her testimony was adverse to the admitted heirs. The trial court sustained the objection, ruling that heirship must be proved by disinterested witnesses. On appeal, the petitioner argued that the trial court erred in barring her testimony. The reviewing court agreed. *In re Estate of Bailey*, 97 Ill. App. 3d at 783-84. In so holding, the court stated that the enactment by the legislature of subsection (d) in 1973 was “intended to change the rule of *Laurence*,” which the court termed “harsh.” *In re Estate of Bailey*, 97 Ill. App. 3d at 783-84. The court elaborated:

“The language of the amendment is reasonably clear and no other purpose can be discerned in enacting the amendment. Respondent’s interpretation would read the general rule, that

interested parties may not testify as to transactions which took place in the presence of decedent, into the exception contained in [subsection (d)]. Such an interpretation would render [subsection (d)] a nullity.” *In re Estate of Bailey*, 97 Ill. App. 3d at 784.

¶ 81 Further, the *Bailey* court “question[ed] whether a proceeding to establish the proper administrator of an estate is within the scope of the [Dead Man’s] Act.” *In re Estate of Bailey*, 97 Ill. App. 3d at 784. The court explained:

“Such a proceeding does not directly reduce or impair the decedent’s estate. Application of the testimonial bar of the [Dead Man’s] Act to situations such as this leads to a race to the court house to be appointed or nominate an administrator. Once the appointment is made, any party wrongfully omitted from the selection must shoulder the onerous burden of proving heirship without the benefit of his own testimony.” *In re Estate of Bailey*, 97 Ill. App. 3d at 784.

As such, the reviewing court held that the petitioner should have been allowed to testify as to her marriage to the decedent. *In re Estate of Bailey*, 97 Ill. App. 3d at 783-84.

¶ 82 Three years after *Bailey* was decided, the court in *In re Estate of Hutchins*, 120 Ill. App. 3d 1084 (1984), also had occasion to consider the effect of subsection (d). At issue in *Hutchins* was whether certain purported heirs of the decedent were competent to testify to their heirship of the decedent under the Dead Man’s Act. The plaintiff argued that the trial court erred in allowing testimony from the purported illegitimate children of the decedent on the issue of the heirship of the decedent. Citing to *Laurence*, the plaintiff asserted that, under the Dead Man’s Act, an heir is competent to testify in a proceeding to establish the heirship of his or her ancestor only where the proceedings are not contested and the establishment of the heirship is routine. The reviewing court disagreed. *In re Estate of Hutchins*, 120 Ill. App. 3d at 1086-87. Relying on the reasoning in *Bailey*,

the court held that the trial court properly admitted the testimony from the purported heirs of the decedent on the issue of the heirship of the decedent pursuant to subsection (d) of the Dead Man's Act. *In re Estate of Hutchins*, 120 Ill. App. 3d at 1086-87.

¶ 83 Turning to the facts in this case, we agree with the rationale set forth in *Bailey* and hold that the trial court abused its discretion in granting Shawn's motion *in limine*, which sought to bar Ellizzette from testifying or presenting any evidence as to any marital relationship she had with decedent. Quite simply, pursuant to the plain language of subsection (d) (735 ILCS 5/8-201(d) (West 2016)), the Dead Man's Act no longer prohibits interested parties from testifying "as to any fact relating to the heirship of a decedent." See *Spencer v. Wayne*, 2017 IL App (2d) 160801, ¶ 16 (noting that the fundamental objective of statutory construction is to ascertain and give effect to the intent of the legislature, the best indicator of which is the plain language of the statute itself). Thus, the trial court should have permitted Ellizzette to testify as to her marriage to decedent as it directly relates to heirship. In so holding, we observe that the court's rationale for its finding, *i.e.*, that Ellizzette did not respond to the authority cited by Shawn, is not supported by the record. While it is true that Ellizzette did not cite any case law in her response to the motion *in limine* or at the hearing on the same, she clearly referenced subsection (d) in her response and asserted that the statute allowed her to testify as to her relationship to the decedent. However, the trial court never addressed the impact of subsection (d) in ruling on Shawn's motion *in limine*.

¶ 84 Additionally, we reject Shawn's claim that *Laurence*, 164 Ill. 367, remains good law. Shawn claims that *Laurence* is still valid precedent because the Illinois Supreme Court "never overruled or modified [the] decision *** in the twelve plus decades following its opinion." Shawn's position completely ignores the fact that the legislature altered the version of the Dead Man's Act interpreted in *Laurence* to provide that "[n]o person shall be barred from testifying as

to any fact relating to the heirship of the decedent” (735 ILCS 5/8-201(d) (West 2016)). This action by the legislature effectively overruled the holding in *Laurence* and its progeny. *In re Estate of Bailey*, 97 Ill. App. 3d at 784 (“[W]e believe that by enacting [subsection (d)] the legislature intended to change the rule of *Laurence* which applied the [Dead Man’s] Act to proceedings to establish heirship.”); see also *In re Estate of Hutchins*, 120 Ill. App. 3d at 1087 (agreeing with the *Bailey* court that the language of subsection (d) was clearly intended by the legislature to change the holding in *Laurence*); Adrienne D. Whitehead, *New Life to the Dead Man’s Act in Illinois*, 5 Loy. U. Chi. L.J. 428 (1974) (opining that the addition of subsection (d) “will undoubtedly be a boon to [putative spouses] who invariably failed under the old statute to establish heirship” and referring to *Laurence*). When the legislature changes the law in response to a ruling by the supreme court, that precedent is overruled when the statute is enacted. See *Roth v. Yackley*, 77 Ill. 2d 423, 429 (1979) (recognizing that the General Assembly has the authority to draft legislation and to amend statutes prospectively if it believes that a judicial interpretation was at odds with its intent). This is exactly what occurred here. Shawn does not even discuss subsection (d) in his brief.

¶ 85 Shawn also maintains that Ellizzette forfeited this issue by failing to make an offer of proof. “An offer of proof informs the trial court, opposing counsel, and the reviewing court of the nature and substance of the evidence sought to be introduced.” *Colella v. JMS Trucking Company of Illinois, Inc.*, 403 Ill. App. 3d 82, 93 (2010). “When a motion *in limine* is granted, the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court.” *Snelson v. Kamm*, 204 Ill. 2d 1, 23 (2003). “However, an offer of proof is not required where it is apparent that the trial court clearly understood the nature and character of the evidence sought to be introduced.” *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002); see also *LaSalle Bank, N.A. v. C/HCA Development Corp.*, 384 Ill. App. 3d 806, 823-24 (2008).

¶ 86 Here, Shawn’s motion *in limine* specifically stated that he “expected that *** Ellizzette *** will attempt to testify that she is the surviving spouse of [decedent].” More significantly, the trial court, in ruling on the motion, stated “to the extent that the spouse is going to testify as to the purported marriage *** I would have to grant the motion *in limine* based on the law that [Ellizzette] can’t testify.” The court later told Ellizzette:

“[H]aving ruled as to your ability to testify, that makes it difficult for you to prove the validity of the marriage. The marriage may have happened. It may have been valid in your eyes, but we’re proceeding under statutes, law, cases, precedent, and rulings on those laws as applied to the facts. So I’m not saying you didn’t have a ceremony, but I may—that may be the effect as it pertains to heirship. It depends what you are able to prove without testifying.”

Given this record, we conclude that an offer of proof was not required because the trial court understood that Ellizzette would testify as to her purported marriage to decedent. See *Dillon*, 199 Ill. 2d at 495 (holding that an offer of proof was not required because the trial court understood that the witness would testify as to the medical standard of care); *LaSalle Bank, N.A.*, 384 Ill. App. 3d at 824 (holding that an offer of proof was not required because the trial court knew both the identity of the proposed witness and the subject matter of his proposed testimony); *First National Bank of Mount Prospect v. Village of Mount Prospect*, 197 Ill. App. 3d 855, 864-65 (1990) (holding that an offer of proof was not necessary where expert’s opinion testimony was obvious).

¶ 87 In short, based upon the 1973 amendment to the Dead Man’s Act, we are compelled to conclude that the trial court abused its discretion in granting Shawn’s motion *in limine* and barring Ellizzette from testifying or presenting any evidence as to any marital relationship she had with decedent at the trial on her petition to establish heirship. As the trial court’s erroneous ruling

precluded Ellizzette from presenting her case in chief, it substantially prejudiced her. See *\$5,608 United States Currency*, 359 Ill. App. 3d at 896. Accordingly, we reverse the trial court's decision to grant a directed finding in Shawn's favor on this basis and remand the matter for a new trial. However, because additional issues related to the reasons cited by the trial court in support of its grant of a direct finding in Shawn's favor may arise on remand, we address those issues now.

¶ 88

E. Directed Finding

¶ 89 Ellizzette challenges the grounds cited by the trial court in support of its decision to direct a finding in Shawn's favor at the close of her case-in-chief. Section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2016)) permits a defendant to move for a directed finding at the close of the plaintiff's case in a bench trial. In ruling on such a motion, the trial court engages in a two-step analysis. *Minch v. George*, 395 Ill. App. 3d 390, 398 (2009). Initially, the court must determine whether the plaintiff presented a *prima facie* case as a matter of law. *Atkins v. Robbins, Salomon & Patt, Ltd.*, 2018 IL App (1st) 161961, ¶ 53. If the court finds that the plaintiff presented a *prima facie* case, it proceeds to the second step and weighs the evidence to determine whether the *prima facie* case survives. *Minch*, 395 Ill. App. 3d at 398. Where, as here, the trial court did not proceed beyond the first stage, we review *de novo* its determination. *In re Foxfield Subdivision*, 396 Ill. App. 3d 989, 992 (2009).

¶ 90 To establish a *prima facie* case, a plaintiff must proffer at least some evidence on every essential element of the cause of action. *In re Foxfield Subdivision*, 396 Ill. App. 3d at 992. To legally marry in Illinois, a couple must fulfill the requirements and formalities set out in the Marriage Act (750 ILCS 5/101 *et seq.* (West 2016)). Section 201 of the Marriage Act (750 ILCS 5/201 (West 2016)) provides that “[a] marriage between 2 persons licensed, solemnized and registered as provided in this [Marriage] Act is valid in this State.” Thus, the parties must apply

for a marriage license from the county clerk's office of the county in which they intend to marry. 750 ILCS 5/202, 203, 207 (West 2016); *In re Estate of Crockett*, 312 Ill. App. 3d 1167, 1171 (2000). Both parties must be present before the county clerk or one of his deputies, pay the required fee, and sign the license application. 750 ILCS 5/203 (West 2016); *In re Estate of Crockett*, 312 Ill. App. 3d at 1171. The parties must then appear before a duly authorized officiant and, after consenting to marry, must file the marriage certificate with the county clerk's office within 10 days of the ceremony. 750 ILCS 5/209 (West 2016); *In re Estate of Crockett*, 312 Ill. App. 3d at 1171. We observe, however, that Illinois courts have conferred "spouse" status upon individuals even when one of the directory requirements of the Marriage Act has not been satisfied. See, e.g., *Haderaski v. Haderaski*, 415 Ill. 118, 119-22 (1953) (concluding that the lack of a license in an otherwise lawful marriage did not invalidate marriage as the statute requiring a license was directory rather than mandatory); *In re Estate of Bailey*, 97 Ill. App. 3d at 786 (noting that, with the exception of the lack of a marriage license, the evidence established that the couple was legally married).

¶ 91 In this case, the trial court ruled that Ellizzette did not present a *prima facie* case of a valid marriage as a matter of law. The court ruled that to present a *prima facie* case on the validity of her marriage to decedent, Ellizzette had to present a valid application for a marriage license and a ceremony performed in Edgar County witnessed by two individuals. The court found, as a matter of law, that Ellizzette "did not present a *prima facie* case of a valid marriage ceremony under the circumstances such as would be sufficient to meet her burden of proof on all of the elements." The court stated that "[i]t would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done." In ruling, the court further stated:

“And while it is not as clear as Mr. Kinnally presents as to the case law precedents—and in that I’m referring to the arguments that [Ellizzette] had when she was represented by counsel during motion practice on a motion for judgment on the pleadings—it is clear that there was an order finding and adjudicating Decedent as a disabled person and in immediate need of a plenary guardianship and that there was no best-interest hearing held; that the punitive [*sic*] marriage was not known to the Administrator until November 2017; and that the marriage was not properly witnessed or licensed or subject to a best-interest determination by the probate court.”

Thus, in concluding that Ellizzette did not establish a *prima facie* case of a valid marriage, the trial court determined that there was no evidence that the purported marriage was properly licensed, there was no evidence of a valid marriage ceremony in Edgar County, there was no evidence of two witnesses to the marriage, and there was no best-interest hearing to determine decedent’s competency to marry. Applying *de novo* review, we conclude that the trial court erred in granting Shawn’s motion for a directed finding on the four grounds cited in its ruling.

¶ 92

1. License

¶ 93 First, the trial court erred in ruling that there was no evidence that the purported marriage was properly licensed. As noted above, in ruling Ellizzette failed to present a *prima facie* case of a marriage, the trial court stated, “[i]t would have been simple to present the evidence of a marriage license and certificate and application and have some witness testify about that, but that was not done.” But this finding by the trial court ignores the fact that on November 30, 2018, almost a year prior to the commencement of trial, the court granted a motion filed by Shawn requesting that it take judicial notice of these very documents. The purpose of judicial notice is to dispense with the normal method of producing evidence. See *State Farm Mutual Automobile Insurance Co. v.*

Grebner, 132 Ill. App. 2d 234, 237 (1971); see also Black’s Law Dictionary (11th ed. 2019) (defining “judicial notice” as “[a] court’s acceptance, for purposes of convenience and without requiring a party’s proof, of a well-known and indisputable fact”); *City of Centralia*, 2019 IL App (5th) 180439, ¶ 10 (noting that a court may take judicial notice of “matters that are readily verifiable from sources of indisputable accuracy, such as public records”). “The theory and effective application of judicial notice of adjudicative facts not only renders the formal introduction of evidence before the trier of fact unnecessary, *Secrist v. Petty*, 109 Ill. 188 (1883); *People v. One 1999 Lexus*, 367 Ill. App. 3d 687, *** but also precludes the introduction of evidence of contrary tenor.” Michael H. Graham, Cleary and Graham’s Handbook of Illinois Evidence § 202.3 (9th ed. 2009). Hence, by order of the court, evidence of a marriage application, license, and certificate were before the court pursuant to its ruling on Shawn’s motion. Since the trial court had already taken judicial notice of these documents for purposes of the trial, there was no need for Ellizzette to re-introduce them.

¶ 94 Shawn argues that the purpose behind his motion was “to highlight every falsehood [Ellizzette] promoted on the Edgar County Clerk, as well as [decedent], a disabled person in need of protection from neglect, exploitation and abuse.” However, this purpose is not set forth in his motion or in the record. In this regard, we observe that the body of Shawn’s motion consisted of one page. In the motion, Shawn simply asked the trial court to take judicial notice, “[p]ursuant to the terms of *** trial” of the “Certified Copy of Edgar County, Illinois Marriage Application and Record of John Wood McDonald, III and Ellizzette Duvall Minicelli [*sic*].” Attached to the motion were certified copies of (1) a “Marriage Application and Record” of “John Wood McDonald III” and “Ellizzette Duvall Minnicelli,” (2) a Marriage License of “John Wood McDonald III” and “Ellizzette Duvall Minnicelli” issued by the Edgar County Clerk, signed by Bement as the

officiant, and indicating that the marriage ceremony occurred in Paris, Illinois on July 11, 2017, and (3) a “Certification of Marriage” of “John Wood McDonald, III” and “Ellizzette Duvall Minnicelli.” No court reporter was present for the argument on this motion, and no basis for or limitations on the trial court’s order appears in the record. The order granting Shawn’s motion simply states that “The Motion for Judicial Notice is granted and the Court hereby takes judicial notice of the exhibits attached thereto.” Since there was no limitation on the purpose for which the exhibits were admitted at trial, we find Shawn’s position lacks merit.

¶ 95

2. Ceremony

¶ 96 Second, the trial court erred when it ruled that Ellizzette did not present some evidence of “a ceremony performed in Edgar County.” Bement testified that he celebrated a marriage ceremony between Ellizzette and decedent on July 11, 2017, in the parties’ home in Paris, Edgar County, Illinois. The “Certification of Marriage” issued by Edgar County, of which the trial court took judicial notice, lists the wedding ceremony as taking place on July 11, 2017, in Paris, Illinois with Bement as the officiant. In addition, we may take judicial notice that Paris is the county seat of Edgar County (<https://edgarcountyillinois.com/about/> (last visited Nov. 5, 2020)). See *People v. Mata*, 217 Ill. 2d 535, 539-40 (2005) (noting that a reviewing court can take judicial notice “of matters that are readily verifiable from sources of indisputable accuracy”); *Trannel v. Prairie Ridge Media, Inc.*, 2013 IL App (2d) 120725, ¶ 20 (taking judicial notice of the population of a county); *People v. Clark*, 406 Ill. App. 3d 622, 632 (2010) (taking judicial notice of park’s location). Indeed, counsel for Shawn admitted in arguing the motion for a directed finding that a marriage ceremony was performed, stating, “there’s no evidence that there is a valid marriage other than what Mr. Bement said, and Mr. Bement said he conducted a ceremony.” The trial court’s

ruling that Ellizzette failed to present some evidence of a ceremony performed in Edgar County is simply not supported by the record.

¶ 97

3. Witnesses

¶ 98 Third, the trial court erred when it ruled that Ellizzette did not present a *prima facie* case because she failed to introduce evidence of two witnesses to the marriage ceremony. Neither Shawn nor the trial court cited any statutory provision requiring the presence of two witnesses for a marriage to be valid in Illinois. Indeed, our research reveals that while many states have a witness requirement, Illinois is not one of them. See, *e.g.*, Alaska Stat. § 25.05.301 (2018) (“In the solemnization of marriage no particular form is required except that the parties shall assent or declare in the presence of each other and the person solemnizing the marriage and in the presence of at least two competent witnesses that they take each other to be husband and wife.”); Cal. Family Code § 359(d) (West 2016) (“The person solemnizing the marriage shall complete the solemnization sections on the marriage license, and shall cause to be entered on the marriage license the printed name, signature, and mailing address of at least one, and no more than two, witnesses to the marriage ceremony.”); Del. Code Ann. tit. 13, § 106(a)(4) (West 2016) (“Marriages shall be solemnized in the presence of at least 2 reputable witnesses who are at least 18 years of age and who shall sign the certificate of marriage.”); La. Rev. Stat. § 244 (West 2016) (requiring marriage ceremony to be “performed in the presence of two competent witnesses of full age”); Kan. Stat. Ann. § 23-2504(a) (West 2016) (providing that a marriage may be validly solemnized “[b]y the mutual declarations of the two parties to be joined in marriage, made before an authorized officiating person and in the presence of at least two competent witnesses over 18 years of age, other than the officiating person, that they take each other as husband and wife”); Mich. Comp. Laws Ann. § 551.9 (West 2016) (“In the solemnization of marriage *** there shall

be at least 2 witnesses, besides the person solemnizing the marriage, present at the ceremony.”); Minn. Stat. § 517.09 (2016) (“No particular form is required to solemnize a civil marriage, except: the parties shall declare in the presence of a person authorized to solemnize civil marriages and two attending witnesses that each takes the other as husband, wife, or spouse.”); Neb. Rev. Stat. § 42.109 (West 2016) (requiring “at least two witnesses, besides the minister or magistrate” to be present at the ceremony where the marriage is solemnized); Nev. Rev. Stat. § 122.110 (West 2016) (“In every case, there shall be at least one witness present besides the person performing the [marriage] ceremony.”); N.Y. Dom. Rel. Law § 12 (McKinney 2016) (requiring “at least one witness beside the clergyman or magistrate” to be present at the ceremony where the marriage is solemnized); N.D. Cent. Code § 14-03-20 (West 2016) (“Every certificate of marriage must contain the full name of each party before and after the marriage and be signed by two witnesses to the marriage in addition to the signature of the person who solemnized the marriage”); Okla. Stat. tit. 43, § 7 (West 2016) (“All marriages must be contracted by a formal ceremony performed and solemnized in the presence of at least two adult, competent persons as witnesses.”); R.I. Gen. Laws § 15-3-8 (West 2016) (“The solemnization of marriage shall be in the presence of at least two (2) witnesses besides the minister, elder, justice, or warden officiating.”); Wis. Stat. § 765.16 (West 2016) (“Marriage may be validly solemnized and contracted in this state only after a marriage license has been issued therefor, and only by the mutual declaration of the 2 parties to be joined in marriage that they take each other as husband and wife, made before an authorized officiating person and in the presence of at least 2 competent adult witnesses other than the officiating person.”); Wyo. Stat. § 20-1-106(b) (West 2016) (“In the solemnization of marriage no particular form is required, except that the parties shall solemnly declare in the presence of the

person performing the ceremony and at least two (2) attending witnesses that they take each other as husband and wife.”).

¶ 99 Nevertheless, citing to *Pike v. Pike*, 112 Ill. App. 243 (1904), Shawn insists that “[p]roviding the names of two witnesses is the public policy in Illinois.” At the outset, we note that *Pike* is not controlling as it was decided in 1904 and appellate decisions filed prior to 1935 have no binding authority. See *Choate v. Indiana Harbor Belt Railroad Co.*, 2012 IL 112948, ¶ 32 n.4 (noting that appellate court decisions filed prior to 1935 have no binding authority and can only be considered persuasive). This technicality aside, we find *Pike* factually inapposite. *Pike* involved a common-law, “secret” marriage that was neither witnessed by anyone nor publicly acknowledged by the participants. At the time of the events in *Pike*, common-law marriages were recognized in Illinois. *Pike*, 112 Ill. App. at 260. However, one of the parties denied that he had married. *Pike*, 112 Ill. App. at 252. Under these circumstances, the reviewing court “regretted that a marriage, such as is claimed in this case, contracted secretly between the parties, no third person being present, is legally permissible.” *Pike*, 112 Ill. App. at 260. The present case does not involve the type of marriage at issue in *Pike*. Indeed, common-law marriages were eliminated by statute in Illinois in 1905. 750 ILCS 5/214 (West 2016); *Hewitt v. Hewitt*, 77 Ill. 2d 49, 62 (1979). *Pike* is simply not persuasive authority for the proposition that a valid marriage in Illinois law requires the presence of two witnesses at the ceremony.

¶ 100 Shawn notes that one of the forms issued by the Edgar County clerk includes a space to provide the names of witnesses to a marriage. Shawn therefore insists that if the two-witness requirement did not remain the policy in Illinois, “the Edgar County Clerk’s instruction to marriage applicants to provide the names of such witnesses would be meaningless.” We find no such instruction in the documents submitted. And while the document referenced by Shawn does

contain lines where the names of witnesses may be provided, there is no indication that this is a requirement to obtain a valid marriage license. Indeed, even though no witnesses are listed, the Edgar County clerk issued a marriage license to decedent and “Ellizzette Duvall Minnicelli,” thereby confirming that witnesses are *not* required under Illinois law. Given the lack of authority substantiating a two-witness requirement for marriages in Illinois, the trial court erred when it ruled that Ellizzette was required to present some evidence that there were two witnesses to her officiated marriage to decedent.

¶ 101

4. Best-Interest Hearing

¶ 102 Fourth, the trial court indicated that, pursuant to the Probate Act, a best-interest hearing was required before decedent could marry. Although not directly cited in the trial court’s ruling, this was apparently a reference to section 11a-17(a-10) of the Probate Act (755 ILCS 5/11a-17(a-10) (West 2016)) which states in pertinent part as follows:

“Upon petition by the guardian of the ward’s person or estate, the court may authorize and direct a guardian of the ward’s person or estate to consent, on behalf of the ward, to the ward’s marriage pursuant to Part II of the Illinois Marriage and Dissolution of Marriage Act if the court finds by clear and convincing evidence that the marriage is in the ward’s best interests.” 755 ILCS 5/11a-17(a-10) (West 2016).

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *State Bank of Cherry*, 2013 IL 113836, ¶ 56. The most reliable indicator of legislative intent is the language of the statute itself, given its plain and ordinary meaning. *State Bank of Cherry*, 2013 IL 113836, ¶ 56. If the statutory language is clear and unambiguous, it must be applied as written, without resorting to further aids of statutory construction. *State Bank of Cherry*, 2013 IL 113836, ¶ 56. Moreover, a court may not depart from the plain language of the statute and

read into it exceptions, limitations, or conditions that are not consistent with the express legislative intent. *State Bank of Cherry*, 2013 IL 113836, ¶ 56.

¶ 103 The plain language of this provision simply does not require prior approval by the court before a ward can marry of his or her own accord. Instead, it provides a procedure to allow a guardian to petition the court for authorization to consent, on behalf of the ward, to the ward's marriage. The fact that a guardian may seek an order allowing consent from the court, however, does not mean that the ward may not marry unless and until the guardian first obtains the court's consent. We read nothing in the language of section 11a-17(a-10) of the Probate Act which expressly declares that a marriage entered into by a ward is void in the absence of a best-interest hearing.

¶ 104 Indeed, this is consistent with *Pape v. Byrd*, 145 Ill. 2d 13 (1991), in which the supreme court held that the appointment of a guardian of a person under the Probate Act is not sufficient, in and of itself, to show that the person was incompetent to consent to marriage. In reaching this result the court explained:

“In this regard, we note that section 11a-3 of the Probate Act of 1975 provides, *inter alia*, that a court may adjudge a person disabled and may appoint a guardian of his person if, because of his disability, he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning the care of his person. In contrast, section 301 of the Marriage Act provides that a declaration of invalidity of a marriage may be obtained where a party, *inter alia*, lacked the capacity to consent to the marriage because of, *inter alia*, mental incapacity or infirmity (Ill. Rev. Stat. 1989, ch. 40, par. 301). Moreover, a person lacks capacity to consent to a marriage where he is unable to

understand the nature, effect, duties and obligations of marriage.” (Footnote omitted.)

Pape, 145 Ill. 2d at 21-22.

Based on the foregoing, the court concluded that the test of incapacity under each of the foregoing provisions of the Probate Act and the Marriage Act “is limited and does not speak to the incapacity required for purposes of the other provision.” *Pape*, 145 Ill. 2d at 21-22. In this case, decedent was adjudged a ward of the court pursuant to section 11a-3 of the Probate Act (755 ILCS 5/11a-3 (West 2016)). Pursuant to *Pape*, however, this fact is insufficient, in and of itself, to require a best-interest hearing prior to decedent marrying. As such, we conclude that the trial court erred in ruling that the lack of a best-interest hearing provided a basis to grant Shawn’s motion for a directed finding at the close of Ellizzette’s case.

¶ 105 Shawn suggests that to the extent *Pape* constituted persuasive authority, it no longer does because the legislature added the language in section 11a-17(a-10) to the Probate Act *after* the supreme court decided *Pape*. We disagree. Shawn’s argument overlooks the plain language of section 11a-17(a-10), which does not prohibit a ward from marrying on his or her own accord in the absence of a best-interest hearing. Moreover, nothing in section 11a-17(a-10) expressly declares a marriage entered into by a ward without his or her guardian’s consent or a best-interest hearing to be a nullity. Shawn also maintains that such a holding ignores a recent case decided by the supreme court, *Karbin v. Karbin ex rel. Hibler*, 2012 IL 112815. In *Karbin*, the supreme court held that a guardian has standing to institute marital dissolution proceedings on behalf of a ward. *Karbin*, 2012 IL 112815, ¶ 52. We read nothing in *Karbin* that prohibits a ward from getting married in the absence of a best-interest hearing. Accordingly, we find Shawn’s reliance on *Karbin* misplaced.

¶ 106

III. CONCLUSION

¶ 107 For the foregoing reasons, we affirm the trial court's rulings denying Ellizzette's motion to vacate the order granting Shawn's petition for letters of administration and affidavit of heirship. We also affirm the trial court's decision to deny Ellizzette's motion for a continuance of trial and her motion for judgment on the pleadings. We find, however, that the trial court erred in barring Ellizzette from testifying at the trial on her petition for letters of administration and affidavit of heirship. Further, the trial court erred in granting Shawn's motion for a directed finding on the four grounds set forth in its oral ruling. The judgment of the circuit court of Kane County is therefore affirmed in part and reversed in part. We remand for further proceedings consistent with this disposition.

¶ 108 Affirmed in part and reversed in part; Cause remanded with directions.

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

SHAWN MCDONALD

Plaintiff/Petitioner

Reviewing Court No: 2-19-1113

Circuit Court No: 2017P000744

Trial Judge: HONORABLE JAMES R MURPHY

v.

10

ELLIZZETTE MCDONALD

Defendant/Respondent

E-FILED
Transaction ID: 2-19-1113
File Date: 2/19/2020 3:45 PM
Jeffrey H. Kaplan, Clerk of the Court
APPELLATE COURT 2ND DISTRICT



REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

Date of

Proceeding

Title/Description

Page No.

01/29/2019	<u>ROP ESQUIRE DEPOSITION SOLUTIONS 17P74</u> <u>4</u>	R 2-R 69
05/01/2019	<u>ROP ESQUIRE DEPOSITION SOLUTIONS 17P74</u> <u>4</u>	R 70-R 194
10/23/2019	<u>ROP MARIANN BUSCH 17P744</u>	R 195-R 241
11/18/2019	<u>ROP GROVE ASSOCIATES REPORTING 17P744</u>	R 242-R 412

Thomas M. Hartwell
Clerk of the Circuit Court
Kane County, Illinois
1/10/2020 1:55 PM
FILED/IMAGED

In the Matter Of:

THE ESTATE OF JOHN W. McDONALD, III

17 P 744

TRANSCRIPT OF PROCEEDINGS

January 29, 2019



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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL
CIRCUIT - KANE COUNTY, ILLINOIS
IN THE MATTER OF THE ESTATE OF:)
JOHN W. McDONALD, III,) No. 17 P 744
Deceased.)

TRANSCRIPT OF PROCEEDINGS had in the
above-entitled cause on the 29th day of January,
A.D. 2019, at 10:45 a.m.

BEFORE: HONORABLE JAMES R. MURPHY



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1 APPEARANCES:

2

3 KINNALLY, FLAHERTY, KRENTZ, LORAN, HODGE &
4 MASUR, PC,

5 (2114 Deerpath Road,
6 Aurora, Illinois 60506,
7 630-907-0909), by:

8 MR. PATRICK M. KINNALLY,

9 -and-

10 GOSSELIN LAW, P.C.,
11 (133 South Batavia Avenue,
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15 MS. GABRIELLE A. GOSSELIN,
16 appeared on behalf of the independent
17 administrator Shawn McDonald;

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22

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1 APPEARANCES: (Continued)

2

3 LESSER, LUTREY, PASQUESI & HOWE, LLP,

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7 MR. JEFFREY P. O'KELLEY and

8 MR. PATRICK LUTREY,

9 appeared on behalf of

10 Ellizzette McDonald.

11

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23 REPORTED BY: ELIZABETH A. HONDROS, C.S.R.,

24 Certificate No. 84-4241.



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1 THE COURT: Okay. We are here on the Estate
2 of John McDonald.

3 MR. O'KELLEY: That's correct, your Honor.
4 Jeff O'Kelley here for Ellizzette McDonald.

5 THE COURT: Good morning.

6 MR. O'KELLEY: Good morning.

7 MR. LUTREY: Good morning. David Lutrey,
8 L-U-T-R-E-Y, on behalf of Ellizzette McDonald.

9 MR. KINNALLY: Good morning, judge. Patrick
10 Kinnally and Gabrielle Gosselin for Shawn McDonald,
11 the independent administrator, who is in court.

12 THE COURT: Good morning. Okay. So we are
13 here on various issues, motions?

14 MR. LUTREY: Yes.

15 MR. O'KELLEY: That's correct, your Honor,
16 three motions pending, two filed by them, one by us.

17 THE COURT: Is it Shawn's motion to compel?

18 MR. KINNALLY: It is.

19 THE COURT: Ellizzette's motion to compel?

20 MR. O'KELLEY: Motion for disclosure of
21 documents, your Honor.

22 THE COURT: Okay. I'm looking at Mr.
23 Kinnally's cover letter of January 24 with courtesy
24 copies, I believe.



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1 MR. O'KELLEY: There should be an additional
2 courtesy copy letter from our office, your Honor,
3 with the briefs relating to the motion for
4 disclosure of medical records.

5 MR. KINNALLY: The final motion, judge, is a
6 motion to pay certain expenses that we filed on
7 December 18, 2018.

8 THE COURT: All right. Those are the three
9 that are up today that I'm aware of. So what do we
10 want to start with?

11 MR. KINNALLY: I'll be happy to take the
12 laboring order if you want me to? I'll take the
13 motion to compel motion and the motion to pay
14 expenses. If you want me to do that, I can do that.

15 MR. O'KELLEY: That's fine with me, your
16 Honor.

17 THE COURT: All right. Let's hear it. I've
18 read your motions here.

19 MR. KINNALLY: I don't have much to add. The
20 motion to compel was filed on December 12, 2018.
21 Attached to it was a partial transcript from a
22 citation proceeding held in my office on August 22
23 where the respondent was Ellizzette McDonald.

24 During that inquiry, I requested that



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1 the laptop computer and the -- or the telephone,
2 iPhone, of the decedent be turned over to the
3 administrator. The record in that proceeding shows
4 at Page 92 of the deposition transcript, Pages --
5 lines 7 to 19 that they already had turned over the
6 laptop and the iPhone to the state police without a
7 warrant. Subsequently, I asked them to produce
8 that, those two items during the inquiry. I
9 followed up with two letters in October, which are
10 Exhibits 2 and 3 to my motion.

11 I had a 201(k) conference with Attorney
12 O'Kelley on November 30. He told me they're not
13 going to produce the two items. And, apparently,
14 the basis for their claim not to produce them is
15 that somehow this will maintain the status quo, and
16 that the items might be subject to damage misuse and
17 loss, none of which have anything to do with
18 discovery under the supreme court rules. We're
19 entitled to this information.

20 In fact, frankly, the administrator is
21 entitled to the two items, period, because this was
22 a citation proceeding. He brought it in a citation
23 proceeding. He's entitled to recover those assets
24 that are part of the estate. And, number one, they



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1 haven't produced either. And, number two, they
2 haven't produced any information from either. So
3 their arguments about damage, misuse, and loss or
4 status quo are totally misplaced.

5 We've requested this on repeated
6 occasions, and we believe that because of that, this
7 has increased the cost of litigation. And with
8 respect to this motion, we're asking that a sanction
9 be imposed for having to bring the motion to begin
10 with and in the form of a payment of attorneys' fees
11 and costs. Thank you.

12 THE COURT: Okay. Mr. O'Kelley?

13 MR. O'KELLEY: Your Honor, the demand that's
14 been made, and it's only been made orally in the
15 course of this deposition and subsequently by
16 counselor in letters, is for the actual laptop and
17 iPhone. And I think that's the real source of
18 concern. It's not for electronically-stored
19 information. The discovery rules counsel cites to
20 about the production of electronically-stored
21 information, what we have here are the actual items
22 themselves, which are the only items that store that
23 information. The concern is right now we have a
24 dispute as to who the appropriate estate



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1 representative is, as to who is the appropriate
2 recipient of all of the assets of this estate, and
3 that dispute is unresolved. It may very well be,
4 and we assert that it should be that Shawn will not
5 be the estate representative, and that Shawn is not
6 entitled to these items.

7 Given that, and, further, given that the
8 parties have an extremely contentious relationship,
9 there is a concern if we actually hand over these
10 items, not the ESI, the actual items, the laptop and
11 the computer, we may have information that is
12 irrevocably lost.

13 Now, this Court has already curtailed
14 Shawn's powers in a lot of other respects, wherein
15 supervised administration. Shawn is not allowed to
16 actually make payments or distributions out of this
17 estate. He's not even empowered to pay his
18 attorneys' fees out of this estate. And all of that
19 is in recognition of the fact that we have right now
20 at issue who should even be in charge of this
21 estate.

22 And those are the same powers Shawn is
23 relying on to compel production of this laptop and
24 phone, again, not the ESI, the laptop and the phone.



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1 Now, if we are going to enter a protective order,
2 perhaps, for production of the ESI, that may be a
3 different story. We could make arrangements
4 potentially to copy that information and provide it
5 to counsel. But actually handing over the laptop
6 and the ESI, the only actual source of that
7 information, is a source of concern. And if it were
8 to be compelled, I'd ask that it be compelled to a
9 disinterested third party rather than to Shawn's
10 possession until we can resolve who should actually
11 be in charge of this estate.

12 And I, certainly, believe, there's no
13 basis for sanctions. These are good faith arguments
14 as to why we have concerns about producing these
15 items, and I explained them to counsel when we
16 spoke.

17 MR. KINNALLY: Judge, my response is there is
18 no good faith basis. I received no response to any
19 of my letters. I received no response to the
20 request of the deposition other than -- and you can
21 look at the transcript -- I was told we will talk
22 about that.

23 Now, Shawn McDonald is the independent
24 administrator of this estate. Letters of office



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1 have issued, and he is the independent
2 administrator. At this particular time, there's no
3 petition to remove him. And he's entitled to have
4 these items, period. More importantly, he's
5 entitled to have the information as part of
6 discovery. But as administrator, he's entitled to
7 these two items, and they should be turned over to
8 him, period. That's all there is to it.

9 This is a citation proceeding. You have
10 the authority to order it. And as far as the
11 sanctions are concerned, they don't have a basis not
12 to turn this information over. If they wanted to
13 enter into some colloquy with respect to turning the
14 information over as opposed to the two channels, I'd
15 be happy to entertain that, but they didn't do it.
16 And I asked three times. What do I have to do? How
17 many times do I have to ask? And they didn't do
18 anything. They didn't even respond to my letters,
19 not even the courtesy of a response.

20 So that's why it's sanctionable, and
21 that's why we're not going to have a colloquy
22 anymore because they forfeited their right to do
23 that, and you should enter a sanction against them
24 and order these two items to be produced. Thank



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1 you.

2 THE COURT: Does anyone have a protective
3 order proposal for the phone and computer?

4 MR. KINNALLY: I do not, judge.

5 MR. O'KELLEY: Nor do I.

6 MR. KINNALLY: Nor did counsel ever ask that a
7 protective order be considered by me. If I had been
8 so, I would have engaged.

9 THE COURT: Well, does anyone have an expert
10 who will make a copy of the contents of, say, the
11 laptop?

12 MR. O'KELLEY: Your Honor, if that were
13 ordered, I'm sure we could make arrangements to do
14 that. I don't have one as I stand here, but that
15 could be done.

16 MR. KINNALLY: I think we're entitled to the
17 two devices, judge.

18 MR. O'KELLEY: This is the issue, your Honor.

19 THE COURT: Well, there's something in the
20 transcript about the -- being in the possession of
21 some police agency at some point.

22 MR. KINNALLY: Well, it was given to the
23 police agency by Ellizzette McDonald without
24 warrant, ad they returned it to her. She admitted



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1 at the deposition that she has the laptop, and she
2 admitted that she had the phone in her possession.

3 THE COURT: So at the deposition, she had them
4 returned?

5 MR. KINNALLY: She admitted as of August 22
6 they were in her possession, and I requested they be
7 turned over, and they weren't turned over. I wrote
8 two letters asking they be turned over, no response.
9 I had a 201(k) conference in this courtroom on
10 November 30. They said they were not going to
11 produce them, and that's all there is to it.
12 They're just saying we're not going to produce it.
13 We can do that because -- for some reason, but it's
14 not provided in the law.

15 MR. O'KELLEY: It's not for some reason, your
16 Honor. Just, again, to clarify, counsel has just
17 stood here and said that they're not willing to
18 accept the ESI. They want the actual devices.
19 That's the issue, your Honor. And I explained to
20 counsel that Ellizzette was not comfortable handing
21 over the actual devices to him, and that was the end
22 of our conversation.

23 So to represent that we have not had a
24 conversation about this or that it has not been



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1 discussed is not accurate.

2 THE COURT: The Court is going to grant the
3 motion to compel the turnover of the two items to
4 the administrator, and then I will entertain any
5 protective order that people want to present within
6 14 days. But if you can't come to agreement on a
7 protective order as to the information on those two
8 items, then the Court may take your respective
9 protective orders, if you have offered them, or
10 consider any objections to somebody's only offered
11 protective order, but the administrator will not
12 delete any information, I know that, or compromise
13 the -- or add to the two items, but I think the
14 items should be turned over. And Ellizzette's not
15 being comfortable with turning them over to Shawn
16 because they're not friendly, that's not a good
17 reason.

18 These are the property of the estate,
19 and -- until further order of the Court, I guess.
20 So those will be turned over within seven -- let's
21 make it the same 14 days.

22 MR. LUTREY: Thank you.

23 THE COURT: And we will set this for a 14-day
24 date, except that I'm filled up on February 13,



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1 which is Wednesday. February 12 is a holiday. So I
2 guess we'll have to go to February 14.

3 MR. O'KELLEY: Your Honor, I know I have a
4 conflict on the 14th. I'm sorry.

5 THE COURT: That's Valentine's Day.

6 MR. O'KELLEY: Believe it or not, I have two
7 other court appearances on Valentine's Day. Is
8 there another day that would work?

9 MR. LUTREY: I can be here on the 14th.

10 THE COURT: The 15th is open as well, the 14th
11 or 15th, whichever you prefer.

12 MR. O'KELLEY: I can do the 15th.

13 MR. LUTREY: Go ahead.

14 THE COURT: Let's make it 10:00 on Friday the
15 15th.

16 MR. O'KELLEY: Understood.

17 THE COURT: Okay. What is -- I know there's
18 your laboring order, Mr. Kinnally.

19 MR. KINNALLY: Yes, number two, the motion to
20 pay expenses. So we filed this on December 18th,
21 and there's two issues; number one, there is a
22 storage fee that's being paid by my client out of
23 his own pocket with respect to storage of personal
24 property, which was the object of a petition for



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1 recovery that Ellizzette filed on June 14, 2018, and
2 has since, apparently, abandoned. That storage unit
3 has documentation in it that belongs to the estate,
4 which is disputed by Ellizzette.

5 And, also, the second part of our motion
6 is there's a car. And this car is some kind of BMW.
7 It's not a collector's item. It's five years old.
8 It's a depreciating asset. And my client has been
9 paying \$441 per month out of his own pocket for this
10 car payment, which originally was purchased by the
11 decedent, and he paid approximately \$18,000 as a
12 down payment, and Ellizzette has made claim to it.

13 So we would like these two expenses to
14 be paid out of the estate. And the response to this
15 motion is curious. They provide no justification
16 for any opposition. And, most importantly, in a
17 motion that they filed with this Court on June 14,
18 2018, which I have a copy for you and which I have
19 tabbed, paragraph 57, they admit in that motion
20 previously filed by Mr. O'Kelley and his client,
21 they admit that paragraph 57, which I've tabbed,
22 that Shawn does have the responsibility as
23 administrator to pay for the car and the storage.
24 And now they say that, apparently, he's supposed to



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1 make those payments out of his own pocket.

2 Now, we came to court originally and
3 told this Court we were not going to do anything
4 without the Court's approval in view of the claims
5 that have been proffered by Ellizzette, and we're
6 simply asking this Court to authorize the payment of
7 those amounts from the estate since, one, it's a
8 storage unit that houses estate materials, personal
9 deed, papers, whatnot, and this car.

10 If they don't want to authorize the payment
11 of the car, then we should just sell it. It's not a
12 collector's item. It's sitting there doing nothing,
13 and that would be an alternative. And we're fine
14 with selling it if that's what the Court wants us to
15 do. But nobody's driving it, and it's depreciating.
16 So in my view, the administrator is taking the
17 appropriate avenue to address these issues and bring
18 them to the Court's attention. He doesn't have to
19 pay this out of his pocket. So that's my argument.
20 Thank you.

21 THE COURT: Response?

22 MR. O'KELLEY: Yeah, your Honor, our position
23 in the response is not that these payments can't
24 come from the estate. To be very, very clear, the



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1 position we've taken is that it should be without
2 prejudice to Ellizzette's right to assert that this
3 BMW and some of the items in the U-Haul storage
4 facility are her assets.

5 THE COURT: Because she's a beneficiary?

6 MR. O'KELLEY: No, actually. By virtue of the
7 fact they are, in fact, hers, not assets of the
8 estate. So that's the core concern, and I just want
9 to explain. It's alleged or at least asserted in
10 the motion to petition that these are assets of the
11 estate, the items in this U-Haul storage facility
12 and this BMW. We had a petition before this Court,
13 which has not been abandoned, as counsel
14 characterizes, which alleges that these items,
15 certain of them in the U-haul storage facility, and
16 the BMW are, in fact, Ellizzette's assets. And we
17 had a petition for recovery on the basis that these
18 are not assets of the estate.

19 You may recall we stood here, I believe
20 in November, and I asked the Court to ultimately
21 continue the hearing on that petition because we
22 wanted to proceed on the issue of whether the
23 marriage was valid, first. And that's all that
24 happened was the hearing on that petition was



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1 continued pending further Court Order. It is still
2 pending and undetermined, and counsel is now asking
3 to treat these as estate assets when it's an open
4 issue as to whether they are.

5 So if the Court wants to enter an order
6 today saying that these payments can be made out of
7 the estate, that is fine. All we ask is that the
8 order reflect that that is without prejudice to our
9 client to continue to assert that these are not
10 actually estate assets. We don't want these
11 payments to be used as evidence that these are not,
12 in fact, our client's assets if and when we go to
13 hearing on that issue. So the order can simply
14 reflect that this is without prejudice to
15 Ellizzette's right to assert that these are her
16 assets, and that's it. There should be no issue
17 beyond that, your Honor.

18 MR. KINNALLY: Judge, this petition was
19 scheduled before you in November. We had witnesses
20 that I had subpoenaed for that hearing who were
21 ready to testify, and then they came in at the last
22 minute and basically said we're not going to go to
23 hearing on this now. So I'm not sure what their
24 argument is. All I know is an administrator has the



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1 responsibility to the estate to deal with estate
2 assets, including a storage unit where estate assets
3 are held. And at this particular time, there's
4 nothing to say they're not estate assets. Maybe
5 they'll prove that at some point. I don't know.

6 But at this point, you've got
7 jurisdiction over this, over my client as
8 administrator, and he wants to pay these expenses
9 out of the estate and not out of his own pocket. If
10 we don't pay them, then it's going to go into a
11 default situation, which I'm sure the Court doesn't
12 want, which is why we brought it to your attention.
13 And that's what we want. We want an order that
14 these two items can be paid out of the estate assets
15 and not out of my client's own pocket. That's what
16 I'm looking for.

17 MR. O'KELLEY: To be clear, your Honor, all
18 we're asking is that the order also reflect that
19 those payments do not prejudice my client's ability
20 to assert that those are her individual assets if
21 and when we get to trial or hearing on that issue.
22 So we're not saying payment can't be made from the
23 estate. We just want it clear in the order that
24 this order is not establishing that these are estate



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1 assets. That's it. We want the opportunity to go
2 to hearing on our petition.

3 THE COURT: Okay.

4 MR. KINNALLY: Right now they are estate
5 assets, judge. That's all there is to it.

6 THE COURT: All right. Well, it seems to me
7 that the -- both parties should agree that the
8 vehicle could be sold. But if there is no agreement
9 as to that, that the -- then the estate is granted
10 the ability to pay the storage expenses of the
11 personal property and the car.

12 MR. KINNALLY: Okay. Thank you.

13 THE COURT: And I still suggest that the
14 parties come to an agreement on selling it and
15 depositing the money in the account to be
16 distributed based on further findings of the Court
17 as to heirship.

18 MR. O'KELLEY: Am I able to add the language
19 to the order that this is without prejudice to
20 Ellizzette's right to assert that these are her
21 assets?

22 MR. LUTREY: The car is actually titled in her
23 name.

24 THE COURT: Right, I understand. Yes, without



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1 prejudice. I'm sure that we'll come to that issue
2 in the future. But right now, and that's the
3 understanding at the time, was they were -- much to
4 her chagrin, was that I would keep it in storage
5 until further determination. So it's wasting the
6 estate to keep it in storage for a year now, since
7 last January, and -- or earlier. I'm not sure when
8 he died, whether it's January --

9 MR. KINNALLY: December he died.

10 MS. GOSSELIN: It was December 8 that the
11 order was entered in the guardianship regarding --

12 THE COURT: 2017, right. Okay. So we had a
13 year of \$450 payments for this car, and not to
14 mention, if she's -- if anybody is paying for the
15 car still, so it ought to be sold, and you ought to
16 come to an agreement on that and then deposit the
17 proceeds to be determined later who gets it.

18 MR. O'KELLEY: The concern with that, just to
19 explain, your Honor, is counsel is right. This is
20 not a collector's item. This is not a fancy BMW.
21 It was an engagement gift. Now, I understand
22 counsel may disagree with that, but I think there is
23 sentimental attachment to this car. It's not
24 unreasonable, which is why I think she'd be



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1 resistant to sell it, just to explain where she's
2 coming from.

3 THE COURT: Got it.

4 MR. KINNALLY: Yeah, we'll file a petition to
5 sell it then, judge.

6 THE COURT: All right.

7 So next -- that's the two motions of the
8 estate.

9 MR. KINNALLY: Yes, it is judge. Thank you
10 for your consideration.

11 THE COURT: And then we have a motion from
12 Ellizzette, right?

13 MR. O'KELLEY: That's correct, your Honor.

14 THE COURT: And which one is that?

15 MR. O'KELLEY: This is a motion -- it's a
16 combined motion to disclose medical records and to
17 enter a HIPAA protective order.

18 THE COURT: Okay. Let's take a break because
19 you said you had a courtesy copy with your cover
20 sheet on it.

21 MR. O'KELLEY: That's correct.

22 THE COURT: I read it on-line, so I didn't
23 locate that yet.

24 MR. O'KELLEY: I have copies if you need it,



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1 your Honor.

2 THE COURT: I'm sure you sent it to me. I
3 just read it on-line earlier, so...

4 MR. O'KELLEY: Understood. Thank you, judge.

5 (WHEREUPON, a recess was had.)

6 THE COURT: So this is the motion -- combined
7 motion for disclosure of mental health records and
8 motion HIPAA-qualified protective order.

9 MR. O'KELLEY: That's exactly right, your
10 Honor.

11 THE COURT: You may proceed, Mr. O'Kelley.

12 MR. O'KELLEY: Thanks.

13 Your Honor, what this motion concerns
14 is, as you may recall, we initially subpoenaed some
15 medical record providers in this case or medical
16 providers, and counsel objected based on the Mental
17 Health Act and said that the estate did not consent
18 to the disclosure of those records. So what the
19 Mental Health Act provides under those circumstances
20 is that this Court can perform an in camera review
21 of those records to determine whether they are
22 appropriate for disclosure without the consent of
23 the estate.

24 We have directed certain medical



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1 providers subpoenas to produce documents to your
2 Honor. I don't know as I stand here if your Honor
3 has received any records yet. With that said, as
4 I'll explain, the core issue here is whether
5 competency is going to be an issue that's addressed
6 at trial or hearing or discoverable. That's what
7 this really boils down to, your Honor.

8 THE COURT: Capacity.

9 MR. O'KELLEY: Capacity to marry specifically.
10 Medical records, obviously, are relevant to that,
11 and they are more probative than prejudicial, and I
12 don't think counsel disputes that. What counsel
13 disputes is he's raised various arguments as to why
14 purportedly capacity is not at issue in this matter.

15 So let me back up for just a moment. We
16 filed a motion for judgment on the pleadings in this
17 case some time ago. What we said in that motion was
18 because the decedent died before there was any
19 challenge to his marriage, what the law says is
20 there's only two bases you can challenge the
21 validity of a marriage after someone dies. This is
22 under the Illinois Marriage and Dissolution of
23 Marriage Act. The first basis is that these people
24 are blood relations. And the second basis is that



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1 these people were married at the time they married
2 one another. And what the law says is any other
3 challenge can't be raised after one of the parties
4 to the marriage dies.

5 We sought an order from the Court
6 limiting the scope of discovery and the hearing to
7 those two issues. This Court denied that motion on
8 the basis that it was premature, and that these are
9 arguments that could be raised at trial or hearing,
10 but that they wouldn't limit the scope of discovery
11 at this stage of the proceedings. In doing so, this
12 Court effectively compelled us to conduct discovery
13 on other issues, including capacity, to the extent
14 that it would be necessary to introduce evidence at
15 trial or hearing on the issue of the decedent's
16 capacity to marry.

17 Now, counsel has raised about three
18 different arguments that I need to address one at a
19 time as to why he believes supposedly the issue of
20 capacity is not relevant. None of that has merit,
21 but each takes a moment to explain. The first is
22 counsel takes the position that res judicata bars
23 any issue of the decedent's capacity to marry. In
24 particular, counsel takes the position that the fact



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1 that the decedent had a guardianship established and
2 an adjudication of disability before he married
3 somehow means that he automatically lacked the
4 capacity to marry. That's counsel's position,
5 basically, any effort to address the issue of
6 capacity to marry now is barred by res judicata.

7 The law simply doesn't say that, your
8 Honor. There's a case we cited through numerous
9 briefs. We've cited it in this brief. Counsel has
10 never responded to it or even acknowledged it
11 exists. It's the Pape case from the Illinois
12 supreme court. What that case says, clearly, in
13 black and white terms, is that an adjudication of
14 disability in a guardianship proceeding is not
15 determinative of that person's capacity to marry.
16 Having a guardianship doesn't mean, by definition,
17 you lack the capacity to marry. And the reason for
18 that, as is explained in that case very clearly, is
19 there are two different capacities at issue. One is
20 the capacity that's addressed in a guardianship
21 proceeding, to manage your finances, to manage your
22 medical decisions. That's what's adjudicated in a
23 guardianship proceeding. That is a different
24 capacity from the capacity to marry under the



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1 Illinois Marriage and Dissolution of Marriage Act,
2 which embraces other considerations that are
3 unrelated.

4 And what the Pape case said very clearly
5 is that an adjudication of disability doesn't mean
6 you lack the capacity to marry. So that argument
7 simply doesn't hold water that we can't address the
8 issue of capacity because there was a guardianship
9 proceeding and it's res judicata barred. That's
10 simply not true. The law says otherwise.

11 The second argument raised by counsel is
12 there's a provision of the Probate Act, Section
13 11a-22b, and they've returned to this again and
14 again and again, and this is the latest reiteration
15 of this, where they say that this provision of the
16 Probate Act says that contracts entered into after
17 the establishment of a guardianship are void. No
18 one has cited to any case, nor does any exist, even
19 suggesting that a marriage is contemplated under
20 this statute as a contract. Very clearly, this
21 statute pertains to commercial contracts, debts,
22 loans, not a marriage between two people. And
23 that's very clear not only from the fact that it's
24 not in the language of the statute, but for the



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1 reasons that I just discussed.

2 The Pape case already said, very
3 clearly, the Illinois Supreme Court, that a
4 determination of disability in a guardianship
5 proceeding doesn't mean the person lacks capacity to
6 marry. So we have carved out marriage and said it's
7 a different capacity, and someone who has a
8 guardianship can still marry. It is very clear that
9 the law says this. And, again, we have cited this
10 case literally a dozen times. Counsel has never
11 responded to it, has never even acknowledged it
12 exists, and continues to assert that a guardianship
13 means you lack capacity to marry. It does not. The
14 law does not say that. It's very clear it's quite
15 the opposite.

16 Now, the final position counsel takes is
17 a new one. It's not one that's been raised in any
18 prior briefs. And that is this: They've pointed to
19 Section 5/11a-17(a)-10 of the Probate Act. And what
20 that section of the Probate Act says is this: A
21 guardian in a guardianship under the right
22 circumstances can petition on behalf of a ward to
23 enter into a marriage. But to do so, the guardian
24 has to have a best interest hearing so the Court can



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1 determine whether it's in the best interests of the
2 ward to get married.

3 And what the statute goes on to say is
4 if the Court enters an order that it is in the
5 ward's best interests, then the clerk shall accept
6 the guardian's application on behalf of the ward.
7 What does this mean? It means that it sets the
8 parameters for a guardian's power and a guardian's
9 ability and a guardian's standing to apply for a
10 marriage on behalf of a ward. That's it.

11 And there's a case cited by counsel,
12 Karbin, which flips the situation on its head. In
13 which case, a guardian petitions to divorce on
14 behalf of a ward who didn't want to divorce. And
15 the whole issue in that case was did the guardian
16 have the standing and the power to do that? And,
17 ultimately, the Court concluded that it did have the
18 standing and the power, and that a best interest
19 hearing was required. And that best interest
20 hearing is for the purpose of determining whether
21 this is, in fact, in the ward's best interest or
22 just what the guardian wants. That's what's the
23 purpose of this best interest hearing. It's
24 specifically tailored to separate the preferences of



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1 the guardian from the ward.

2 So all of this is to say the law cited
3 by counsel addresses very specifically a guardian's
4 ability to apply for a marriage on behalf of a ward.
5 Counsel is interpreting this to mean that this is
6 the only way a ward can marry is through a guardian.
7 Counsel is taking the position that once there's a
8 guardianship, basically, only the guardian has the
9 power to apply for a marriage on behalf of the ward
10 and that this procedure must be followed for a valid
11 marriage. But for reasons I've already discussed,
12 that's simply not true, your Honor.

13 And, again, I return to that Pape case,
14 the one that counsel has never acknowledged, the one
15 that makes very clear that an adjudication of
16 disability in a guardianship proceeding does not
17 mean by definition that the ward lacks capacity to
18 marry. Someone can have a guardianship and still
19 marry of their own volition. And that's their only
20 requirement under the Illinois Marriage and
21 Dissolution of Marriage Act is that you have the
22 capacity to marry.

23 So counsel's interpretation is
24 effectively robbing a ward who has the capacity to



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1 marry of his independent ability to do so. Counsel
2 is trying to take the position that because the
3 guardian didn't try to apply for a marriage on
4 behalf of the ward and because the guardian didn't
5 seek a best interest hearing, that by definition,
6 the decedent's marriage is not valid, and that's
7 simply not true. It's not a correct interpretation
8 of the law, and it's no basis to preclude us from
9 being able to review and use as evidence, if
10 necessary, medical records that relate to the
11 decedent's capacity, specifically his capacity to
12 marry, which I can't emphasize enough, is its own
13 specific capacity separate and apart from the issue
14 of capacity in a guardianship proceeding.

15 Now, your Honor, for those reasons, we
16 believe capacity is relevant. We would like to be
17 able to use these records as necessary to be able to
18 establish that capacity at trial or hearing or to
19 rebut any challenge to it. And I have a HIPAA
20 protective order to set the scope of what can and
21 can't be produced if the Court is willing to
22 disclose those documents. I have that on hand right
23 now.

24 So I'm asking for the opportunity to be



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1 able to actually review and use these documents and
2 that they be disclosed by the Court.

3 THE COURT: I did get some responses from
4 Sheldon Greenberg, I believe, MDSC; Attorney Scifo,
5 I believe, who's an attorney, not a psychologist or
6 a psychiatrist.

7 MR. O'KELLEY: That one's a surprise to me,
8 your Honor, but understood.

9 THE COURT: Because he had some psyche -- in
10 his file, he had psychiatric evaluations, I believe.

11 MS. GOSSELIN: That is correct your Honor.
12 Dr. Narni (phonetic) was their independent expert in
13 the guardianship case.

14 THE COURT: I think that's in here, but it's
15 unclear.

16 Then I have a large production stack of
17 papers here, and I don't know who it's from because
18 it doesn't attach the subpoena on top, and my
19 secretary said 1 of 4 is missing, that it's produced
20 2 of 4, 3 of 4, and 4 of 4 that are highlighted at
21 the top, but 1 of 4 is missing. So maybe that's
22 what has the subpoena on top or who is producing it.

23 MR. O'KELLEY: Your Honor, my best guess would
24 be either Dr. Naushad Nonkarti (phonetic), who we



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1 subpoenaed and directed that he produce documents to
2 you, or Dr. Jayarama Naidu, but I don't know.

3 THE COURT: All right. Well, I have not
4 performed the in camera yet of these documents, but
5 that's what I was saying would eventually happen
6 because I'm not sure I have everything. But anyway,
7 you can still argue this motion.

8 So a response, Mr. Kinnally.

9 MR. KINNALLY: Okay. So a couple facts that
10 are not disputed. Number one, the privilege of
11 confidentiality with respect to mental health
12 records survives death. There's no doubt about it.
13 And that's not disputed in this case. My client,
14 the administrator, stands on that privilege, that
15 these records should not be produced because at this
16 particular point in time, those records belong to
17 the estate. They do not belong to Ellizzette.

18 Number two, the issue of John McDonald's
19 capacity was already decided on May 30, 2017. At
20 that time, a plenary guardian was appointed for him,
21 who is my client. And that case was 17 P 151, which
22 we filed a motion to consolidate that case into this
23 case, which I don't think the Court has ever ruled
24 on. That guardianship has never been closed.



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1 Mr. McDonald passed away in December of
2 -- a year ago, '17, I believe. And a final report
3 was submitted to Judge Noverini, and I do not
4 believe that report has ever been approved by Judge
5 Noverini. Everything that they seek in this case,
6 in this subpoena, in this motion, is what was in
7 that file. So it would seem to me that that is the
8 appropriate point, being that the cases should be
9 consolidated so you can look at them.

10 They have not shown, number one, that
11 they have good cause to see those records. And the
12 reason for that is as follows: We know that on May
13 30, 2017, an order was entered that stated that my
14 client would be the plenary guardian of his brother.
15 We know that order became final on July 1, 2017,
16 since no appeal was taken. We know on July 11,
17 2017, a marriage ceremony was celebrated between the
18 ward of the court and Ellizzette, I believe in
19 Paris, Illinois, somewhere. We also know, since I
20 took her deposition, that she was aware that a
21 plenary guardian had been appointed prior to the
22 marriage, as was John, and she knew that Shawn was
23 the plenary guardian.

24 Now, the attorney for Ellizzette tells



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1 you that it's my view that this marriage is invalid
2 based on the arguments that I've made in my moving
3 papers in response to their motion. It's not my
4 view. It's the legislature's view. Number one, the
5 Illinois Supreme Court in 1905 said each person must
6 be capable to assent to a marriage contract. It's
7 Hayman v. Hayman. And we cite it in our papers.

8 The Illinois legislature, after the case
9 that they want to rely on -- so Pape or Pape or
10 whatever it is. In 2014, after the Karbin case was
11 decided by the supreme court in 2012, passed a
12 statute, which said that a best interest hearing had
13 to be held by a trial court with respect to whether
14 or not a ward could enter into a marriage before the
15 marriage could be celebrated. That's not Pat
16 Kinnally. That's the Illinois General Assembly.
17 That's the 755 ILCS 5/11a-17(a)-10. That is the
18 statute that applies to guardianships for disabled
19 adults.

20 More importantly, the statute says,
21 which Ellizzette has ignored, that unequivocally,
22 unless a judge signs an order authorizing the
23 marriage through a guardian's request, then the
24 circuit clerk or the county clerk shall not issue,



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1 should not issue, shall not issue a marriage
2 license. That's what the statute says. I didn't
3 make that up.

4 So the point is this: Wards have a very
5 special place in our jurisprudence for a lot of
6 reasons. They can't help themselves. They need the
7 Court's production. Their liberty interests have
8 been given up by an order of the Court authorizing a
9 plenary guardianship. And in this particular case,
10 no hearing was ever held, no best interest hearing
11 was ever held prior to this marriage being
12 celebrated. Therefore, on its face, the statute
13 says the clerk who issued the marriage license,
14 assuming the information provided was accurate,
15 which we believe it wasn't, did not have the
16 authority to issue a license without an order from
17 this Court in the state of Illinois.

18 What do we know? We know that
19 Ellizzette knew that a guardianship was -- occurred.
20 We know she knew that John had a plenary guardian.
21 She knew, because she was talking to John's lawyer
22 at that time, Attorney Scifo, that a plenary
23 guardianship had been appointed -- or had occurred,
24 and they went ahead and got married anyway. The



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1 marriage is not valid because a best interest
2 hearing has to be held, number one. And, number
3 two, once it is held, the Court has to sign an order
4 which authorizes the clerk to issue a license to
5 marry. Those aren't my views. Those are the
6 general assembly that are contained in the statute.

7 So we've discovered this information
8 with respect to -- after taking Ellizzette's
9 deposition, after talking to the guardian ad litem,
10 the former guardian ad litem, after doing other
11 discovery with respect to the issue before the
12 Court. They cannot establish a legal relationship
13 to John McDonald. The reason they can't establish a
14 legal relationship to John McDonald is because the
15 marriage by its own terms is invalid, not because of
16 what my argument is, but because of what the statute
17 says with respect to disabled adults.

18 There's another problem with their
19 motion. Throughout, I believe it's Exhibit A,
20 Ellizzette has violated Supreme Court Rule 138
21 concerning disclosure of the decedent's Social
22 Security Number. They did it seven times. They did
23 it on every subpoena. They had no authority to do
24 that. It's a clear violation. It's a willful

1 violation. They know what the law is. They did it
2 anyway. Why did they do that? They didn't have to
3 do that. Most, if not all the information, they
4 wanted in this case could come from the file that
5 was before Judge Noverini. All they had to do was
6 seek an order to look at the information in the file
7 instead of going through this charade.

8 The point of the matter is this.
9 They're not entitled to the information. My client
10 relies on the confidentiality of the records. If
11 they want to get this information, they can go and
12 get the information from the guardianship file. She
13 has no legal relationship at this time to the
14 decedent based on the arguments we've made. They're
15 not my arguments. They're the general assembly that
16 said specifically if you want to get married to
17 somebody who's a ward of a guardian, then you have
18 to have a best interest hearing. You have to have a
19 judge sign off on it, and you have to have an order
20 that authorizes the clerk of the county to issue a
21 license to marry. That's what the statute says,
22 judge. That's why they're not entitled to any of
23 this. Thank you.

24 THE COURT: Are you saying that the



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1 legislature responded per legislative history to the
2 Karbin case and that --

3 MR. KINNALLY: No doubt about it.

4 THE COURT: -- and the Probate Act?

5 MR. KINNALLY: No doubt about it. Prior to
6 2014, legislature did not have a best interest
7 requirement. The only time legislature acted, and I
8 believe it was 2014, was after Karbin was decided.
9 And at that time, they put in the provision --
10 Karbin was a common law decision, which reversed a
11 lot of precedent. Karbin stood for the proposition
12 if a spouse wants to get a divorce, then she has to
13 go to court so that the Court can determine whether
14 it's in the best interest of the spouse who is
15 suffering from a disability and in a guardianship
16 before this state.

17 After Karbin was decided, the
18 legislature, in 2014, amended the statute to require
19 not only a best interest hearing for divorce, but a
20 best interest hearing for marriage. And that was
21 prior to this case starting in 2017. Counsel should
22 have been aware of it. Ellizzette should have been
23 aware of it. She was represented by a lawyer. If
24 they wanted to enter into a valid marriage, they had



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1 to get some judge in this county, herself or someone
2 else, to sign off on that particular order and have
3 a best interest hearing, and then issue an order
4 that says the clerk, the county clerk could issue a
5 license to marry. That's what the statute says,
6 judge.

7 MR. O'KELLEY: Judge, if I may.

8 THE COURT: They didn't -- this is the case of
9 first impression after that, that it does -- the
10 legislature didn't dot all the Is and cross all the
11 Ts with the IMDMA is what their argument is.

12 MR. KINNALLY: Their argument is whatever they
13 want it to be. All I know, from my perspective, is
14 what the legislature says with respect to this
15 particular instance, that a best interest hearing
16 must be conducted. That's all there is to it. Why
17 one was not conducted in this case, I have no idea.
18 But Ms. McDonald had the opportunity. She knew that
19 a plenary guardianship was in full force and effect.
20 She knew it was a final judgment. John McDonald was
21 represented by an attorney who was talking not only
22 to her, but to him -- because I took his deposition,
23 and my colleague was there -- for two days, and he
24 admitted that during his deposition. The point of



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1 the matter is clear.

2 I think the legislatures's statement is
3 very exacting, judge. It says this is what's got to
4 happen, and it didn't happen in this case.

5 THE COURT: One other question to follow-up --

6 MR. KINNALLY: Sure.

7 THE COURT: -- in response to the motion for
8 judgment on the pleadings, did you cite the best
9 interest hearing argument?

10 MR. KINNALLY: I did not at that time because
11 I didn't have all the information. I didn't know.
12 I hadn't taken Scifo's deposition, and I hadn't
13 taken Ellizzette's deposition, and I had not
14 obtained information from the guardian ad litem.
15 Once I did, then I asserted it.

16 THE COURT: Mr. O'Kelley, reply?

17 MR. O'KELLEY: There's a very important point
18 to be made here, your Honor. Counsel has returned
19 again and again to what the statute says and what
20 this case says. You can see them for yourself.
21 They're cited in our brief. I'd encourage you to
22 look at the Karbin case. They, simply, do not say
23 what counsel says they say. Karbin, I'm just going
24 to briefly address it because counsel has said that



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1 it stands for the proposition that you cannot have a
2 valid marriage after a guardianship unless you have
3 a best interest hearing. Literally nowhere in that
4 case is that said.

5 What was at issue in Karbin was a
6 guardian over the objection of the ward wanted to
7 get a divorce for the ward. And the Court had to
8 examine the issue of did the guardian have the power
9 to do that? And it went through a very lengthy
10 analysis because the prior understanding had been
11 unless the powers of the guardian were specifically
12 enumerated in the Probate Act, the guardian didn't
13 have those powers. But that the law had evolved
14 over time to start finding implicit powers of a
15 guardian that weren't explicitly enumerated in the
16 Probate Act. And that's the analysis of the case.
17 Does the guardian have the power to do this.

18 And what the Court concluded was yes, we
19 find the guardian implicitly has the power seek a
20 divorce. But before the guardian can do that, he
21 must have a best interest hearing. That's what the
22 case stands for. And, again, it exists. I'd
23 encourage your Honor to take a look because it
24 simply does not say there can be no valid marriage



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1 in the absence of a best interest hearing.

2 The statute is cited, the actual
3 language of the statute that counsel keeps
4 summarizing is cited in our reply brief, and I'm
5 going to read it because I think it's important.
6 What the statute says is, "Upon petition by the
7 guardian of the ward's person or estate, the Court
8 may authorize and direct a guardian of the ward's
9 person or estate to consent on behalf of the ward to
10 the ward's marriage."

11 It's empowering a guardian under
12 particular circumstances to do that. It is not
13 saying that is the only means for a ward to marry.
14 And, in fact, we know it's not because the case law
15 is very clear that the ward, even though there is a
16 guardianship, may have the capacity to walk out and
17 get married of their own volition. And to deprive
18 them of that would be unconstitutional.

19 And, finally, your Honor, this business
20 of an order, that the statute supposedly says that
21 the only way a clerk can issue an order -- excuse
22 me, can issue a marriage certificate is with an
23 order of the court after a best interest hearing,
24 that is not, not what the statute says. And I'm



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1 going to read it. The words of the statute say,
2 "Upon presentation of a Court order authorizing and
3 directing a guardian of the ward's person and estate
4 to consent to the ward's marriage, the county clerk
5 shall accept the guardian's application, appearance,
6 and signature on behalf of the ward for purposes of
7 issuing a license to marry."

8 Again, this ties back to the guardian's
9 power and authority to act on behalf of the ward.
10 Counsel is plucking out of thin air the notion that
11 this is the only means for a ward to marry. And, in
12 fact, that's completely inconsistent with the law.
13 I don't need to argue that the Probate Act wasn't
14 taking into account the requirements of the Illinois
15 Marriage and Dissolution of Marriage Act. They did.
16 These statutes are consistent. It's just counsel
17 who's trying to read them in a way that's
18 inconsistent. There is no legal basis for counsel
19 to stand here and assert that this statute or the
20 Karbin case require a best interest hearing before a
21 ward can marry. That is not anywhere in here, your
22 Honor.

23 Now, as to the issue of redacted
24 exhibits, that was an honest mistake, your Honor.



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1 Counsel has made the same mistake in these
2 proceedings in a prior pleading and submitted
3 redacted exhibits. We will do the same. And I
4 apologize for the error. We did not mean to include
5 information that was protected by Rule 138, and I
6 will gladly supply a redacted version.

7 But as to the broader issue, your Honor,
8 there's simply no legal basis, and you need to only
9 look at the law to see it doesn't say what counsel
10 says it says.

11 THE COURT: All right. Well, I've read your
12 respective briefs, including the reply, and I know
13 from your respective briefs what Karbin was about.
14 As far as the eventual hearing in this case, I think
15 that the records that are in the probate file or
16 that are here in response to some subpoenas could be
17 relevant to Ellizzette's case, and she may use those
18 to talk about capacity as opposed to the judge's
19 finding of a guardianship or finding of limited
20 capacity or no capacity, but I think that that
21 hearing can talk about or can undercut whatever the
22 judge may have found in that guardianship case, and
23 that capacity is a relevant issue.

24 So the question then becomes whether the



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1 subpoenas and the response to the subpoenas can be
2 disclosed. I think they can. And this is an
3 acceptable method. I'm going to overrule the
4 privilege, the urging of the privilege by the
5 administrator on behalf of the decedent. I think
6 the mental capacity is an issue in the case and has
7 been put in as an issue in the case. And if you do
8 have an issue as to validity of the marriage or
9 capacity to enter into the marriage as opposed to
10 just having the two IMDMA issues that are urged by
11 Ellizzette of bigamy or relation and there is an
12 issue of capacity or voidness or validity, I think
13 these are relevant and can be disclosed.

14 The only question is should there be any
15 parts of these that are redacted by the Court after
16 an in camera? And I've already said that I'm going
17 to do an in camera of these documents. So that's
18 all I'll hold onto these for for now and take 14
19 days within which to redact or withhold parts of the
20 responses to the subpoenas. And then on the 14-day
21 date after I sort out who has produced what and
22 whether I have the complete production, because as I
23 said, my secretary made a note as to missing section
24 1 of 4 on one of the productions, I've got to match



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1 that up possibly with somebody's -- if I do have
2 1/4, I will find out which one that is, and then
3 I'll let you know what I have. And then if that's
4 all I have and it's not complete in you answer to
5 your subpoenas, to Ellizzette's subpoenas, then
6 Ellizzette can either bring a motion to compel the
7 production that hasn't been produced or Ellizzette
8 can go to the probate file or the guardianship file
9 and seek an order at that point from me, I guess. I
10 think both cases are in front of me having been
11 substituted, but I don't know anything about
12 consolidating them yet.

13 MR. KINNALLY: I filed a motion to consolidate
14 them, but you never ruled on it.

15 MR. O'KELLEY: I believe you denied that
16 motion, actually.

17 MR. KINNALLY: Maybe you did. I don't
18 remember.

19 MR. LUTREY: It was denied.

20 MR. KINNALLY: It should be here. It should
21 be here.

22 THE COURT: It's here in front of me. It's
23 just not consolidated is my recollection.

24 MR. O'KELLEY: I think that's exactly right,



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1 your Honor.

2 THE COURT: If there's something left over on
3 that file, for instance, approving the final report,
4 I don't know if that's been noticed in front of --
5 previously in front of Judge Noverini or now -- or
6 after the substitution in front of me. But if I owe
7 somebody to look at the final report and approve
8 that report, and then if I owe -- and then following
9 up that, if the phones are to be turned over from
10 the one hand of the guardian to the other hand when
11 he's now administrator, then that should be done,
12 too, to follow up --

13 MR. KINNALLY: We can do that, judge.

14 THE COURT: -- for housekeeping purposes.

15 So -- but let me look at these. And
16 let's set this for approximately three weeks so that
17 I can use those 14 days. And I know we did
18 something else earlier on 14 days. I'm out the week
19 of the 18th for some of those days, and there's a
20 holiday, so it goes to the week of the 25th of
21 February.

22 MR. O'KELLEY: Your Honor, we have an existing
23 February 15 date we previously discussed. Do you
24 have any objection to us --



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1 THE COURT: Oh, you do?

2 MR. O'KELLEY: Well, just from today. Would
3 you have any objection to us moving everything to
4 the 25th instead?

5 MR. LUTREY: It's the 14 days. Does that give
6 you enough time is the question?

7 MR. O'KELLEY: Because otherwise we'd be
8 coming back --

9 MR. KINNALLY: Well, I want my laptop and
10 phone by the 15th.

11 THE COURT: All right. Well, let's do
12 everything on the 15th then, and we'll deal with a
13 closing date of court tomorrow because it's going to
14 be 50 below or something. And then there's also
15 President's Day or Lincoln's birthday on the 12th,
16 next Tuesday, but we'll see what we can get done by
17 the 15th.

18 MR. O'KELLEY: Understood. Appreciate it.

19 There's one last small issue, your
20 Honor. On the original motion to compel, you
21 granted that motion, but it was my understanding you
22 weren't awarding sanctions. I just want to be clear
23 in the order if that's so.

24 THE COURT: Correct. I may not have said that



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1 on the record, but I don't feel that we're at the
2 point yet of sanctions on that issue. And I guess
3 the request for sanctions, if it is not turned over
4 on or before the 15th, would still be applicable.

5 MR. O'KELLEY: Understood.

6 THE COURT: Okay.

7 MR. O'KELLEY: Thank you, judge.

8 THE COURT: You've got to deal with your
9 client, and I don't know how cooperative your client
10 is.

11 MR. LUTREY: We'll inform her of that. Thank
12 you.

13 THE COURT: All right.

14 (WHICH WERE ALL THE PROCEEDINGS HAD
15 IN THE ABOVE-ENTITLED CAUSE ON THIS
16 DATE.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, ELIZABETH A. HONDROS, a Certified
5 Shorthand Reporter of the State of Illinois, do
6 hereby certify that I reported in shorthand the
7 proceedings had at the hearing aforesaid, and that
8 the foregoing is a true, complete and correct
9 transcript of the proceedings of said hearing as
10 appears from my stenographic notes so taken and
11 transcribed under my personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 14th day of
14 February, 2019.

15 *Elizabeth A. Hondros*

16 ELIZABETH A. HONDROS

17 Certified Shorthand Reporter

18

19

20

21

22 C.S.R. Certificate No. 84-4241.

23

24



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TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: \$18,000..addressed

	14-day	21:12	57	accurate
\$	13:23	33:19	15:19,21	13:1
	46:20	34:13,15,		36:14
		17 39:21	7	acknowledge
\$18,000	14th	2018		d
15:11	14:4,9,10	5:7,20		26:10
\$441	15	15:1,18	7	28:11
15:9	48:23		6:5	30:14
\$450	151	22	755	act
21:13	33:21	5:22 12:5	35:17	23:17,19
	15th	24		24:23
1	14:10,11,	4:23	8	27:1,12,
	12,15	25th		16 28:19,
1	49:10,12,	48:20	8	20 30:21
32:19,21	17 50:4	49:4	21:10	39:4
34:15	17			42:12,16
46:24	33:21	3	9	44:9,13,
1/4	34:2			15
47:2	18	3	92	acted
10:00	5:7	6:10	6:4	39:7
14:14	18th	32:20		actual
11	14:20	30	A	7:16,21
34:16	48:19	6:12		8:10 9:6
11a-22b	19	12:10		12:18,21
27:13	6:5	33:19	abandoned	43:2
12	1905	34:13	15:2	ad
5:20 14:1	35:5		17:13	11:24
12th		4	ability	37:9,10
49:15	2	4	19:19	41:14
13		32:19,20,	20:10	44:15
13:24	2	21 46:24	29:9 30:4	add
138	6:10		31:1	5:19
37:20	32:20	5	absence	13:13
45:5	201 (k)		43:1	20:18
14	6:11 12:9	5/11a-17 (a)	accept	additional
13:6,21	2012	-10	12:18	5:1
14:2	35:11	28:19	29:5 44:5	address
15:1,17	2014	35:17	acceptable	16:17
46:18	35:10	50	46:3	25:18
48:17,18	39:6,8,18	49:14	account	26:5 27:7
49:5	2017		20:15	41:24
			44:14	addressed
				24:5



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: addresses..based

26:20	21:16	apply	38:15	attorneys'
addresses	ahead	29:9	assent	7:10 8:18
30:3	14:13	30:4,9	35:6	August
adjudicated	36:24	31:3	assert	5:22 12:5
26:22	air	appointed	8:4 17:2	authority
adjudicatio	44:10	33:20	18:9,15	10:10
n	alleged	34:21	19:20	36:16
26:2,13	17:9	36:23	20:20	37:23
27:5	alleges	approval	28:12	44:9
30:15	17:14	16:4	44:19	authorize
administrat	allowed	approve	asserted	16:6,10
ion	8:15	48:7	17:9	43:8
8:15	alternative	approved	41:15	authorizes
administrat	16:13	34:4	asset	37:4
or	amended	approving	15:8	38:20
4:11 6:3,	39:18	48:3	assets	authorizing
20 9:24	amounts	approximate	6:23 8:2	35:22
10:2,6	16:7	ly	17:4,7,	36:8 44:2
13:4,11	analysis	15:11	10,16,18	automatical
15:23	42:10,16	48:16	18:3,10,	ly
16:16	anymore	argue	12,16	26:3
18:24	10:22	33:7	19:2,4,	avenue
19:8	apologize	44:13	14,20	16:17
33:14	45:4	argument	20:1,5,21	awarding
46:5	apparently	16:19	assuming	49:22
48:11	6:13	18:24	36:14	aware
admit	15:2,24	27:6,11	attach	5:9 34:20
15:19,21	34:16	37:16	32:18	39:22,23
admitted	appeal	40:11,12	Attached	
11:24	34:16	41:9	5:21	B
12:2,5	appearance	arguments	attachment	
40:24	44:5	7:3 9:13	21:23	back
adults	appearances	24:13	attention	24:15
35:19	14:7	25:9,18	16:18	44:8 49:8
37:17	applicable	35:2	19:12	barred
agency	50:4	38:14,15	attorney	26:6 27:9
11:21,23	application	arrangement	6:11	bars
agree	29:6 44:5	s	32:4,5	25:22
20:7	applies	9:3 11:13	34:24	based
agreement	35:18	assembly	36:22	20:16
13:6		35:16	40:21	
20:8,14		37:6		



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: bases..client's

23:16	24:24	25:13, 16,	22 46:6, 7	26:8, 9
35:2	BMW	20, 23	cases	27:18
38:14	15:6	26:4, 6,	34:8	28:9
bases	17:3, 12,	15, 17, 20,	47:10	29:11
24:20	16 21:20	24 27:6, 8	celebrated	30:2
basically	boils	28:5, 7, 13	34:17	41:21
18:22	24:7	30:17, 22,	35:15	43:2, 4
26:5 30:8	break	24 31:11,	36:12	cites
basis	22:18	13, 14, 16,	ceremony	7:19
6:14	briefly	18 33:19	34:17	claim
9:13, 18	41:24	43:16	certificate	6:14
10:11	briefs	45:18, 20,	43:22	15:12
17:17	5:3 26:9	23 46:6,	chagrin	claims
24:23, 24	28:18	9, 12	21:4	16:4
25:8 31:8	45:12, 13	car	challenge	clarify
44:18	bring	15:6, 10,	24:19, 20	12:16
45:8	7:9 16:17	23 16:9,	25:3	clear
begin	47:6	11 20:11,	31:19	16:24
7:9	broader	22 21:13,	channels	19:17, 23
behalf	45:7	15, 23	10:14	27:23
4:8 28:22	brother	carved	characteriz	28:8, 14
29:6, 10,	34:14	28:6	es	30:15
14 30:4, 9	brought	case	17:14	37:24
31:4 43:9	6:22	23:15	charade	41:1
44:6, 9	19:12	24:17	38:7	43:15
46:5	business	26:8, 11,	charge	49:22
believes	43:19	12, 18	8:20 9:11	clerk
25:19	business	27:4, 18	35:24	29:5
belong	business	28:2, 10	circuit	35:24
33:16, 17	business	29:11, 13,	35:24	36:13
belongs	business	15 30:13	circumstanc	37:4
15:3	business	32:13	es	38:20
beneficiary	business	33:13, 21,	23:19	40:4
17:5	business	22, 23	28:22	43:21
bigamy	business	34:5	43:12	44:4
46:11	business	35:8, 10	citation	client
birthday	business	36:9 38:4	5:22 6:22	14:22
49:15	business	39:2, 21	10:9	15:8, 20
black	business	40:8, 17	cite	18:9 19:7
26:13	business	41:4, 20,	35:7 41:8	33:13, 21
blood	business	22 42:4,	cited	34:14
	business	16, 22	client's	38:9 50:9
	business	43:14		
	business	44:20		
	business	45:14, 17,		



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: closed..court

18:12	13:12	consistent	22:24	7:16
19:15,19	computer	44:16	copy	county
closed	6:1 8:11	consolidate	5:2 9:4	35:24
33:24	11:3	33:22	11:10	38:20
closing	concern	47:13	15:18	40:1,4
49:13	7:18,23	consolidate	22:19	44:4
colleague	8:9 9:7	d	core	couple
40:23	17:8	34:9	17:8 24:4	33:9
collector's	21:18	47:23	correct	court
15:7	concerned	consolidati	4:3,15	4:1,5,11,
16:12	10:11	ng	22:13,21	12,17,19,
21:20	concerns	47:12	31:7	22 5:8,17
colloquy	9:14	contained	32:11	6:18 7:12
10:13,21	23:13	37:6	49:24	8:13
combined	concluded	contemplate	cost	11:2,9,19
22:16	29:17	d	7:7	12:3
23:6	42:18	27:19	costs	13:2,8,
comfortable	conduct	contentious	7:11	19,23
12:20	25:12	8:8	counsel	14:5,7,
13:15	conducted	contents	7:19 9:5,	10,14,17
commercial	40:16,17	11:10	15 11:6	15:17
27:21	conference	continue	12:16,20	16:2,3,6,
common	6:11 12:9	17:21	17:13	14,21
39:10	confidentia	18:9	18:2	17:5,12,
compel	lity	continued	21:19,22	20 18:1,5
4:17,19	33:11	18:1	23:16	19:11
5:13,20	38:10	continues	24:12	20:3,6,
8:23 13:3	conflict	28:12	25:17,22,	13,16,24
47:6	14:4	contract	24 26:9	21:12
49:20	consent	27:20	27:11	22:3,6,
compelled	23:17,22	35:6	28:10,16	11,14,18,
9:8 25:12	43:9 44:4	contracts	29:11	22 23:2,
competency	considerati	27:16,21	30:3,5,7,	6,11,20
24:5	on	conversatio	14 31:1	24:8
complete	22:10	n	39:21	25:5,7,12
46:22	considerati	12:22,24	41:18,23,	26:12
47:4	ons	cooperative	24 43:3	28:3,24
completely	27:2	50:9	44:10,16,	29:4,17
44:12	considered	copies	18 45:1,9	31:21
compromise	11:7	4:24	counsel's	32:2,3,9,
			26:4	14 33:3,
			30:23	23 34:18
			counselor	35:5,11,
				13 36:8,
				17 37:3,



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: Court's..divorce

12,20	49:13	decisions	determine	disclosure
38:24	David	26:22	23:21	4:20 5:4
39:4,13	4:7	deed	29:1	23:7,18,
40:8		16:9	39:13	22 37:21
41:5,7,16	day		determined	discoverabl
42:7,18	14:5,7,8	default	21:17	e
43:7,23	49:15	19:11		24:6
44:2	days	definition	determining	
45:11	13:6,21	26:16	29:20	discovered
46:15	40:23	30:17	devices	37:7
47:22	46:19	31:5	11:17	discovery
48:2,14	48:17,18,	delete	12:18,21	6:18 7:19
49:1,11,	19 49:5	13:12	died	10:6
13,24			21:8,9	25:6,10,
50:6,8,13	deal	demand	24:18	12 37:11
	19:1	7:13		
Court's	49:12	denied	dies	discussed
16:4,18	50:8	25:7	24:21	13:1 28:1
36:7		47:15,19	25:4	30:11
	death		direct	48:23
courtesy	33:12	deposit	43:8	disinterest
4:23 5:2		21:16		ed
10:19	debts	depositing	directed	9:9
22:19	27:21	20:15	23:24	dispute
courtroom	decedent		33:1	7:24 8:3
12:9	6:2 15:11	deposition	directing	disputed
	24:18	6:4 7:15	44:3	15:4
cover	26:1	9:20	disability	33:10,13
4:23	38:14	12:1,3	26:2,14	disputes
22:19	46:5	34:20	27:5 28:4	24:12,13
		37:9	30:16	Dissolution
cross	decedent's	40:22,24	39:15	24:22
40:10	25:15,23	41:12,13	disabled	27:1
curious	31:6,11		35:18	30:21
15:15	37:21	depreciatin	37:17	44:15
		g	disagree	distributed
curtailed	December	15:8	21:22	20:16
8:13	5:7,20	16:15	disclose	distributio
	14:20	deprive	22:16	ns
	21:9,10	43:17	31:22	8:16
D	34:1	determine	disclosed	divorce
	decided	21:5 28:4	32:2	29:13,14
damage	33:19	determinati	46:2,13	39:12,19
6:16 7:3	35:11	on		
date	39:8,17	26:15		
13:24	decision			
46:21	39:10			
48:23				



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: documentation..facility

42:7,20	16:5	22:17	7:24 8:2,	exist
documentati	22:12	28:23	5,17,18,	27:18
on	33:17	35:14	21 9:11,	existing
15:3	34:18,24	39:24	24 13:18	48:22
documents	35:21	46:9	15:3,14	exists
4:21 24:1	36:19	entered	16:7,8,24	26:11
31:22	37:20	21:11	17:8,11,	28:12
32:1	39:22	27:16	18 18:3,	42:22
33:1,4	46:11	34:13	7,10	expenses
46:17	47:6,7	enters	19:1,2,4,	5:6,14
dot	Ellizzette'	29:4	9,14,23,	14:20
40:10	s	entertain	24 20:4,9	15:13
doubt	4:19	10:15	21:6 22:8	19:8
33:12	13:14	13:4	23:17,23	20:10
39:3,5	17:2,16	entitled	33:17	expert
dozen	18:15	6:19,21,	43:7,9	11:9
28:10	20:20	23 8:6	44:3	32:12
driving	37:8	10:3,5,6	evaluations	explain
16:15	41:13	11:16	32:10	17:9
	45:17	38:9,22	eventual	21:19
	47:5	enumerated	45:14	22:1 24:4
E	embraces	42:12,15	eventually	25:21
	27:2	error	33:5	explained
earlier	emphasize	45:4	evidence	9:15
21:7 23:3	31:12	ESI	18:11	12:19
48:18	empowered	8:10,24	25:14	26:18
effect	8:17	9:2,6	31:9	explicitly
40:19	empowering	12:18	evolved	42:15
effectively	43:11	establish	42:13	extent
25:12	encourage	31:18	exacting	25:13
30:24	41:21	37:12,13	41:3	extremely
effort	42:23	established	42:8	8:8
26:5	end	26:1	excuse	F
electronica	12:21	establishin	43:21	face
lly-stored	engaged	g	Exhibit	36:12
7:18,20	11:8	19:24	37:19	facility
Ellizzette	engagement	establishme	exhibits	17:4,11,
4:4,8	21:21	nt	6:10	15
5:23	enter	27:17	44:24	
11:23	9:1	estate	45:3	
12:20	10:13,23	4:1 6:24		
15:1,4,12	18:5			



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: fact..hearing

fact	final	friendly	32:4	35:18
6:20 8:19	5:5 28:16	13:16	guardian	guess
17:7,16	34:2,15	front	28:21,23	13:19
18:12	40:20	47:10,22	29:13,15,	14:2
25:24	48:3,7	48:4,5,6	22 30:1,	32:23
27:23	finally	full	6,8 31:3,	47:9 50:2
29:21	43:19	40:19	4 33:20	
43:14	finances	future	34:14,21,	H
44:12	26:21	21:2	23 36:20	
facts	find		37:9,10	
33:9	42:19	G	38:17	hand
faith	47:2		41:14	8:9 31:22
9:13,18	finding	Gabrielle	42:6,8,	48:10
fancy	42:14	4:10	11,12,15,	handing
21:20	45:19	general	17,19,20	9:5 12:20
February	findings	35:16	43:7,8,11	happen
13:24	20:16	37:6	44:3	33:5 41:4
14:1,2	fine	38:15	48:10	happened
48:21,23	5:15	gift	guardian's	17:24
fee	16:13	21:21	29:6,8,9	happy
14:22	18:7	give	30:3	5:11
feel	flips	49:5	35:23	10:15
50:1	29:12	gladly	44:5,8	guardianshi
fees	follow	45:6	P	Hayman
7:10 8:18	48:12	good	21:11	35:7
file	follow-up	4:5,6,7,	26:1,14,	head
22:4	41:5	9,12	16,20,23	29:12
32:10	force	9:13,18	27:8,17	health
34:7	40:19	13:16	28:4,8,	23:7,17,
38:4,6,12	forfeited	34:11	12,21	19 33:11
45:15	10:22	Gosselin	30:8,16,	hear
47:8 48:3	form	4:10	18 31:14	5:17
filed	7:10	21:10	32:13	hearing
4:16 5:6,	found	32:11	33:24	17:21,24
20 14:20	45:22	grant	36:9,19,	18:13,20,
15:1,17,	frankly	13:2	23 38:12	23 19:21
20 24:16	6:20	granted	39:15	20:2 24:6
33:22	Friday	20:9	40:19	25:6,9,15
47:13	14:14	49:21	42:2	28:24
filled		Greenberg	43:16	29:19,20,
13:24			45:19,22	23 31:5,
			47:8	18 35:12
			guardianshi	36:10
			ps	



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: heirship..item

37:2	18:17	implicitly	38:3, 6, 9,	iphone
38:18	19:17	42:19	11,12	6:2, 6
39:19, 20	21:19	important	41:11, 14	7:17
40:3, 15	22:13	41:17	45:5	irrevocably
41:9	23:1, 10,	43:5	initially	8:12
42:3, 21	13 24:2, 7	importantly	23:14	issue
43:1, 23	26:8	10:4	inquiry	8:20
44:20	30:12	15:16	5:24 6:8	11:18
45:14, 21	31:15	35:20	instance	12:19
heirship	32:8, 11,	imposed	40:15	17:22
20:17	23 41:18	7:9	48:3	18:4, 13,
held	42:23	impression	interest	16 19:21
5:22 19:3	43:19	40:9	28:24	21:1
35:13	44:22, 24	include	29:18, 19,	24:4, 5, 14
36:10, 11	45:7	45:4	21, 23	25:15, 19,
37:2, 3	48:1, 22	including	31:5	23 26:5,
highlighted	49:20	19:2	35:12	19 27:8
32:20	housekeepin	25:13	36:10	29:15
HIPAA	g	45:12	37:1	31:13
22:17	48:14	inconsisten	38:18	33:18
31:19	houses	t	39:6, 14,	35:24
HIPAA-		44:12, 18	19, 20	36:1, 16
QUALIFIED	I	increased	40:3, 15	37:4, 11
23:8		7:7	41:9	38:20
history	idea	independent	42:3, 21	40:3, 4
39:1	40:17	4:11 9:23	43:1, 23	42:5, 8
hold	ILCS	10:1 31:1	44:20	43:21, 22
27:7	35:17	32:12	interests	44:23
46:18	Illinois	individual	29:1, 5	45:7, 23
holiday	24:22	19:20	36:7	46:6, 7, 8,
14:1	26:11	inform	interpretat	12 49:19
48:20	27:1 28:3	50:11	ion	50:2
honest	30:20	information	30:23	issued
44:24	34:19	6:19 7:2,	31:7	10:1
Honor	35:5, 8, 16	19, 21, 23	interpretin	36:13
4:3, 15, 21	36:17	8:11 9:4,	g	issues
5:2, 16	44:14	7 10:5,	30:5	4:13
7:13	IMDMA	12, 14	introduce	14:21
11:12, 18	40:11	13:7, 12	25:14	16:17
12:16, 19	46:10	36:14	invalid	25:7, 13
14:3	implicit	37:7	35:1	46:10
16:22	42:14	implicitly	37:15	issuing
				44:7
				item



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: items..literally

15:7	22 40:1,	Kinnally	30:17	35:8
16:12	6,7 41:3	4:9,10,18	language	39:1,6,7,
21:20	45:22	5:5,11,19	20:18	18 40:10,
items	48:5,13	9:17	27:24	14
6:8,13,	50:7	11:4,6,	43:3	legislature
16,21	judge's	16,22	laptop	's
7:21,22	45:18	12:5	6:1,6	35:4
8:6,10	judgment	14:18,19	7:16	legislature
9:15	24:16	18:18	8:10,23,	s's
10:4,7,24	40:20	20:4,12	24 9:5	41:2
13:3,8,	41:8	21:9	11:11	lengthy
13,14	judicata	22:4,9	12:1 49:9	42:9
17:3,11,	25:22	33:8,9	large	letter
14 19:14	26:6 27:9	35:16	32:16	4:23 5:2
<hr/>	July	39:3,5	latest	letters
J	34:15,16	40:12	27:14	6:9 7:16
<hr/>	June	41:6,10	law	9:19,24
January	15:1,17	47:13,17,	12:14	10:18
4:23	jurisdiction	20 48:13	24:19	12:8
21:7,8	n	49:9	25:2 26:7	liberty
Jayarama	19:7	Kinnally's	27:10	36:7
33:2	jurispruden	4:23	28:9,14	license
Jeff	ce	knew	30:2 31:8	36:2,13,
4:4	36:5	34:22	38:1	16 37:4
John	justificati	36:19,20,	39:10	38:21
4:2 33:18	on	21 40:18,	42:13	40:5 44:7
34:22	15:15	20	43:14	limit
36:20	<hr/>	L	44:12	25:10
37:13,14	K	L-U-T-R-E-Y	45:9	limited
40:20	<hr/>	4:8	lawyer	45:19
John's	Karbin	laboring	36:21	limiting
36:21	29:12	5:12	39:23	25:6
judge	35:10	14:18	left	Lincoln's
4:9 5:5	39:2,8,	lack	48:2	49:15
9:17	10,11,17	26:17	legal	lines
11:4,17	41:22,23	27:6	37:12,14	6:5
18:18	42:5	28:13	38:13	litem
20:5	44:20	lacked	44:18	37:9,10
22:5,9	45:13	26:3	45:8	41:14
23:4	kind	lacks	legislative	literally
34:3,4	15:6	28:5	39:1	
35:22			legislature	
38:5,19,				



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: litigation..number

28:10	14:14	38:21	merit	34:6 35:3
42:3	16:1 36:3	40:5	25:20	37:19
litigation	makes	43:13	method	41:7
7:7	30:15	44:7,11, 21	46:3	47:6,13, 16 49:20, 21
loans	manage	match	minute	motions
27:22	26:21	46:24	18:22	4:13,16 5:18 22:7
locate	marriage	materials	misplaced	moving
22:23	17:23	16:8	7:4	35:2 49:3
loss	24:19,21, 22,23	matter	missing	
6:17 7:3	25:4	24:14	32:19,21 46:23	
lost	27:1,19, 22 28:6, 23 29:10	38:8 41:1	mistake	N
8:12	30:4,9, 11,20,21	Mcdonald	44:24 45:1	
lot	31:3,6 34:17,22	4:2,4,8, 10 5:23	misuse	Naidu
8:14 36:5 39:11	35:1,6, 14,15,23	9:23 11:23	6:16 7:3	33:2
Lutrey	36:1,11, 13 37:1, 15 39:20, 24 42:2, 24 43:10, 22 44:4, 15 46:8,9	34:1 37:13,14 40:18,20	moment	Narni
4:7,14 13:22 14:9,13 20:22 47:19 49:5 50:11		Mcdonald's	24:15 25:21	32:12
		33:18	money	Naushad
M		MDSC	20:15	32:24
	married	32:4	month	nobody's
	25:1 26:2	means	15:9	16:15
made	29:2	26:3 28:13 29:7	morning	Nonkarti
7:14 15:12 18:6 19:22 35:2 38:14 41:18 45:1 46:23	36:24 38:16 43:17	43:13 44:11	4:5,6,7, 9,12	32:24
	marry	medical	motion	note
	24:9	5:4 22:16 23:15,24	4:17,19, 20 5:3,5, 6,13,20 6:10 7:8, 9 13:3 14:19 15:5,15, 17,19 17:10	46:23
maintain	25:16,23 26:4,6, 15,17,24 27:6	24:10 26:22 31:10	noticed	48:4
6:15	28:6,8,13 30:6,18, 19,22	mental	44:10	notion
make	31:1,12 37:5	23:7,16, 19 33:11 46:6	44:10	44:10
8:16 9:3 11:10,13 13:21		mention	November	November
		21:14	9 13:3 14:19 15:5,15, 17,19 17:10	6:12 12:10 17:20 18:19
			22:11,15, 16 23:6, 7,8,13 24:16,17 25:7 33:7,22	Noverini
				34:3,5 38:5 48:5
				number
				6:24 7:1



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: numerous..person's

14:19,21	48:24	order	6:4	5:6,13
33:10,18	49:3	5:12 9:1	paid	8:17
34:10	objections	10:10,24	14:22	14:20
35:4	13:10	11:3,7	15:11,14	15:23
37:2,22	obtained	13:5,7,	19:14	16:19
numerous	41:14	11,19	Pape	19:8,10
26:8	occasions	14:18	26:11	20:10
	7:6	18:1,5,8,	27:4 28:2	paying
O	occurred	13 19:13,	30:13	15:9
	36:19,23	18,23,24	35:9	21:14
O'KELLEY	October	20:19	papers	payment
4:3,4,6,	6:9	21:11	16:9	7:10
15,20	offered	22:17	32:17	15:10,12
5:1,15	13:9,10	23:8 25:5	35:3,7	16:6,10
6:12	office	29:4	paragraph	19:22
7:12,13	5:2,22	31:20	15:19,21	payments
11:5,12,	9:24	34:13,15	parameters	8:16
18 12:15	on-line	35:22	29:8	16:1,23
14:3,6,	22:22	36:8,16	Paris	18:6,11
12,16	23:3	37:3	34:19	19:19
15:20	one's	38:6,19	part	21:13
16:22	32:7	40:2,3	6:24 10:5	pending
17:6	open	43:20,21,	15:5	4:16
19:17	14:10	23 44:2	partial	18:1,2
20:18	18:3	47:9	5:21	people
21:18	opportunity	49:23	parties	13:5
22:13,15,	20:1	ordered	8:8 20:7,	24:23
21,24	31:24	11:13	14 25:3	25:1
23:4,9,	40:18	orders	parts	27:22
11,12	opposed	13:9	46:15,19	perform
24:9	10:14	original	party	23:20
32:7,23	45:18	49:20	9:9	performed
40:7	46:9	originally	passed	33:4
41:16,17	opposite	15:10	34:1	period
47:15,24	28:15	16:2	35:11	6:21
48:22	opposition	override	Pat	10:4,8
49:2,7,18	15:16	46:3	35:15	person
50:5,7	orally	owe	Patrick	28:5 35:5
object	7:14	48:6,8	4:9	43:7,9
14:24	objection	Pages	pay	44:3
objected	42:6			person's
23:16				26:15



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: personal..providers

personal	44:10	42:11, 13,	probate	producing
14:23		14	27:12, 16	9:14
16:8	pocket		28:19, 20	32:22
20:11	14:23	precedent	39:4	
	15:9	39:11	42:12, 16	production
perspective	16:1, 19	preclude	44:13	7:20 8:23
40:13	19:9, 15	31:8	45:15	9:2 32:16
		prefer	47:8	36:7
pertains	point	14:11	probative	46:22
27:21	11:21		24:11	47:7
	19:5, 6	preferences		productions
petition	33:16	29:24	problem	46:24
10:3	34:8 36:4		37:18	
14:24	38:8	prejudice	procedure	proffered
17:10, 12,	40:24	17:2	30:10	16:5
17, 21, 24	41:17	18:8, 14	proceed	property
18:18	47:9 50:2	19:19	17:22	13:18
20:2 22:4		20:19	23:11	14:24
28:22	pointed	21:1		20:11
43:6	28:18		proceeding	proposal
		prejudicial	5:22 6:3,	11:3
petitions	police	24:11	22, 23	
29:13	6:6		10:9	proposition
	11:21, 23	premature	26:14, 21,	39:11
phone		25:8	23 27:9	42:1
8:24 11:3	position		28:5	protected
12:2	16:22	present	30:16	45:5
49:10	17:1	13:5	31:14	
	25:22, 24	presentatio	proceedings	protective
phones	26:4	n	25:11	9:1 11:2,
48:9	28:16	44:2	45:2	7 13:5, 7,
phonetic	30:7 31:2	President's		9, 11
32:12, 24		49:15	proceeds	22:17
	possession		21:17	23:8
place	9:10	previously	produce	31:20
36:5	11:20	15:20	6:7, 13, 14	prove
pleading	12:2, 6	48:5, 23	12:11, 12	19:5
45:2	possibly		24:1 33:1	provide
	47:1	prior	produced	9:4 15:15
pleadings	potentially	28:18	7:1, 2	provided
24:16	9:4	34:21	10:24	12:14
41:8		36:11	31:21	36:14
	power	39:5, 21	privilege	
plenary	29:8, 16,	42:10	32:19	providers
33:20	18 30:9	45:2	33:15	23:15, 16
34:14, 21,	42:8, 17,		46:21	24:1
23 36:9,	19 44:9	privilege	47:7	
20, 22		33:10, 14		
40:19	powers	46:4		
	8:14, 22			
plucking				



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: provision..response

provision	27:11	6:3 23:15	relevant	require
27:12,15	28:17	50:1	24:10	39:18
39:9			25:20	44:20
	read	records	31:16	required
psyche	5:18	5:4 22:16	45:17,23	29:19
32:9	22:22	23:7,18,	46:13	
	23:3 43:5	21 24:3,		requirement
psychiatric	44:1,17	10 31:10,	relies	30:20
32:10	45:11	17 33:12,	38:10	39:7
		15,16	rely	requirements
psychiatrist	ready	34:11	35:9	
32:6	18:21	38:10	relying	44:14
	real	45:15	8:23	res
psychologist	7:17	recover	remember	25:22
32:5	reason	6:23	47:18	26:6 27:9
	12:13,15	recovery	remove	resistant
purchased	13:17	15:1	10:3	22:1
15:10	26:17	17:17	repeated	resolve
	34:12	redact	7:5	9:10
purportedly	37:13	46:19	reply	respect
24:14	reasons	redacted	41:16	7:8 10:13
	28:1	44:23	43:4	14:23
purpose	30:11	45:3,6	45:12	33:11
29:20,23	31:15	46:15	report	35:13
	36:6	reflect	34:2,4	37:8,11,
purposes	rebut	18:8,14	48:3,7,8	17 40:14
44:6	31:19	19:18	represent	respective
48:14	recall	reiteration	12:23	13:8
	17:19	27:14	representative	45:12,13
put	23:14	relate	representative	respects
39:9 46:7	received	31:10	8:1,5	8:14
	9:18,19	relating	represented	respond
Q	24:3	5:3	39:23	10:18
	recess	relation	40:21	responded
	23:5	46:11	request	26:10
quo	recipient	relations	9:20	28:11
6:15 7:4	8:2	24:24	35:23	39:1
	recognition	relationships	50:3	respondent
R	8:19	P	requested	5:23
	recollection	8:8	5:24 7:5	response
raised	47:23	37:12,14	12:6	9:17,18,
24:13	record	38:13		19 10:19
25:3,9,17				



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: responses..statute

12:8	sanctionabl	29:24	30:12	spouse
15:14	e	31:13	31:7	39:12,14
16:21,23	10:20	set	41:22	stack
33:8 35:3	sanctions	13:23	42:24	32:16
41:7	9:13	31:20	45:8	stage
45:16	10:11	48:16	sitting	25:11
46:1	49:22	sets	16:12	stand
responses	50:2,3	29:7	situation	11:14
32:3	scheduled	Shawn	19:11	24:2
46:20	18:19	4:10 8:4,	29:12	44:19
responsibil	Scifo	5,15,22	small	standing
ity	32:4	9:23	49:19	29:9,16,
15:22	36:22	13:15	Social	18
19:1	Scifo's	15:22	37:21	stands
return	41:12	34:22	sold	33:14
30:13	scope	Shawn's	20:8	42:1,22
returned	25:6,10	4:17 8:14	21:15	start
11:24	31:20	9:9	somebody's	5:10
12:4	secretary	she'd	13:10	42:14
27:13	32:19	21:24	47:1	starting
41:18	46:23	sheet	sort	39:21
reversed	section	22:20	46:21	state
39:10	27:12	Sheldon	sought	6:6 36:17
review	28:19,20	32:4	25:5	39:16
23:20	46:23	shown	source	stated
31:9 32:1	Security	34:10	7:17 9:6,	34:13
robbing	37:22	shows	7	statement
30:24	seek	6:3	special	41:2
Rule	31:5 34:5	sign	36:5	status
37:20	38:6	37:3	specific	6:15 7:4
45:5	42:19	38:19	31:13	statute
ruled	47:9	40:2	specificall	27:20,21,
33:23	sell	signature	y	24 29:3
47:14	16:11	44:6	24:9	35:12,18,
rules	22:1,5	signs	29:24	20 36:2,
6:18 7:19	selling	35:22	30:3	12 37:6,
s	16:14	simply	31:11	16 38:21
sanction	20:14	16:6	38:16	39:18
7:8 10:23	sentimental	18:13	42:11	40:5
	21:23	26:7	spoke	41:19
	separate	27:7,10	9:16	43:2,3,6,



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: statutes..unequivocally

20,24 44:1,19	47:11	24 28:16	titled 20:22	13:14,20 48:9 50:3
statutes 44:16	substitutio n 48:6	taking 16:16 30:7 37:8 44:14	today 5:9 18:6 49:2	turning 10:13 13:15
stood 12:17 17:19 39:11	suffering 39:15	talk 9:21 45:18,21	told 6:12 9:21 16:3	turnover 13:3
storage 14:22,23 15:2,23 16:8 17:3,11, 15 19:2 20:10 21:4,6	suggest 20:13	talking 36:21 37:9 40:21	tomorrow 49:13	U
store 7:22	suggesting 27:19	telephone 6:1	top 32:18,21, 22	U-HAUL 17:3,11, 15
story 9:3	summarizing 43:4	tells 34:24	totally 7:4	ultimately 17:20 29:17
subject 6:16	supervised 8:15	terms 26:13 37:15	transcript 5:21 6:4 9:21 11:20	unclear 32:15
submitted 34:3 45:2	supply 45:6	testify 18:21	treat 18:3	unconstitut ional 43:18
subpoena 32:18,22 34:6 37:23	supposed 15:24	thin 44:10	trial 19:21 24:6 25:9,15 31:18 35:13	undercut 45:21
subpoenaed 18:20 23:14 33:1	supposedly 25:19 43:20	ties 44:8	true 27:10 30:12 31:7	understand 20:24 21:21
subpoenas 24:1 45:16 46:1,20 47:5	surprise 32:7	time 10:2 19:3 21:3 24:17 25:1,19 33:16,20 36:22 38:13 39:7,9 41:10 42:14 49:6	Ts 40:11	understandi ng 21:3 42:10 49:21
subsequentl y 6:7 7:15	survives 33:12	times 10:16,17 28:10 37:22	Tuesday 49:16	understood 14:16 23:4 32:8 49:18 50:5
substituted	tabbed 15:19,21		turn 10:12	undetermine d 18:2
	tailored 29:24		turned 6:2,5 10:7 12:7,8	unequivocal ly
	takes 25:21,22,			



800.211.DEPO (3376)
EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
THE ESTATE OF JOHN W. McDONALD, III

January 29, 2019
Index: unit..years

35:21	violation	36:4
unit	37:24	warrant
15:2 16:8	38:1	6:7 11:24
19:2	virtue	wasting
unreasonabl	17:6	21:5
e	void	water
21:24	27:17	27:7
unrelated	voidness	Wednesday
27:3	46:12	14:1
unresolved	volition	week
8:3	30:19	48:18,20
urged	43:17	weeks
46:10		48:16
urging	W	whatnot
46:4		16:9
	walk	whichever
v	43:16	14:11
Valentine's	wanted	white
14:5,7	10:12	26:13
valid	17:22	willful
17:23	38:4	37:24
30:10	39:24	withhold
31:6 37:1	42:6	46:19
39:24	ward	witnesses
42:2,24	28:22	18:19
validity	29:2,6,	words
24:21	10,14	44:1
46:8,12	30:1,4,6,	work
vehicle	9,17,24	14:8
20:8	31:4	wrote
version	34:18	12:7
45:6	35:14	
view	38:17	y
16:4,16	42:6,7	
35:1,4	43:9,13,	
views	15 44:6,	
37:5	9,11,21	
violated	ward's	year
37:20	29:5,21	21:6,13
	43:7,8,10	34:2
	44:3,4	years
	Wards	15:7



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Thomas M. Hartwell
Clerk of the Circuit Court
Kane County, Illinois

1/10/2020 1:55 PM

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In the Matter Of:

IN THE MATTER OF THE ESTATE OF JOHN MCDONALD III

17 P 744

TRANSCRIPT OF PROCEEDINGS

May 01, 2019



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TRANSCRIPT OF PROCEEDINGS
 IN THE MATTER OF THE ESTATE OF JOHN MCDONALD III

May 01, 2019

1

1 IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
 2 KANE COUNTY, ILLINOIS
 3 IN THE MATTER OF THE ESTATE OF:)
 4 JOHN W. MCDONALD, III,)No. 17 P 744
 5 Deceased.)

6
 7 TRANSCRIPT OF PROCEEDINGS had in the
 8 above-entitled cause on the 1st day of May, A.D.
 9 2019, at 1:30 p.m.

10

11 BEFORE: HONORABLE JAMES R. MURPHY.

12

13 APPEARANCES:

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18 847.295.8800), by:

19 MR. JEFFREY P. O'KELLEY,

20 okelley@llmhlegal.com,

21 appeared on behalf of Ellizzette McDonald;

22

23

24



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A-118

TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD IIIMay 01, 2019
2

1 APPEARANCES: (CONT.)

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18 appeared on behalf of Shawn McDonald.

19

20 REPORTED BY: KIMBERLY A. MURPHY,

21 CSR NO. 84-2586.

22

23

24

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1 THE COURT: The Estate of McDonald, 17 P 744.
2 Counsels for the record.

3 MR. O'KELLEY: Jeff O'Kelley on behalf of
4 Ellizzette McDonald.

5 MS. GOSSELIN: Gabrielle Gosselin on behalf of
6 Shawn McDonald.

7 MR. WARMBOLD: Christopher Warmbold also on
8 behalf of Shawn McDonald.

9 THE COURT: What is on the schedule for today?

10 MR. O'KELLEY: A few things, your Honor.
11 Would it be all right if I approach?

12 THE COURT: Yes, come on up. Then we won't
13 have any trouble hearing.

14 MR. O'KELLEY: Thank you, Judge.

15 So this ranges from the simple to not so
16 simple, so I'll start with the simple. We've got a
17 Petition to Sell and a Motion to Stay hearing on
18 that Petition that we filed for the Court's Order.
19 I understand that counsel wants to enter a briefing
20 schedule on that Motion to Stay to which we have no
21 objection so we would enter a briefing schedule on
22 this Court's Order, if that's okay.

23 THE COURT: That's to sell a BMW?

24 MS. GOSSELIN: Correct.



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1 MR. WARMBOLD: Correct.

2 THE COURT: And the -- whose Motion to Stay is
3 it?

4 MR. O'KELLEY: It's ours, your Honor. And I
5 can get into the merits of it, but since counsel
6 wants to respond in writing, we have no objection to
7 her doing so.

8 THE COURT: All right. At the end of the
9 hearing we will give you a date for hearing of that
10 motion.

11 MR. O'KELLEY: Understood.

12 THE COURT: Well, you're going to brief the
13 Motion to Stay. Is that what I'm understanding?

14 MR. O'KELLEY: Counsel has asked to brief the
15 motion.

16 MS. GOSSELIN: Correct. We just received the
17 Motion to Stay so we have not yet had an opportunity
18 to respond to it.

19 THE COURT: So we may have a hearing on the
20 Motion to Stay that Petition to Sell. Okay. All
21 right.

22 So then what is the more complex?

23 MR. O'KELLEY: Well, before that, the Court
24 last entered in its Order that we would have



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1 continuance of discovery deadlines or adjustments of
2 them in this matter. Given that we withdrew and
3 have now re-appeared after 60 days, I'm willing to
4 meet with counsel afterward. I have proposed
5 extensions, and we can come before the Court and
6 make sure the Court is agreeable with them. That's
7 a simple matter, but that's something we can address
8 after the hearing, if your Honor wants.

9 THE COURT: Okay.

10 MR. O'KELLEY: Then the more complex. We're
11 here basically on two matters for which testimony is
12 probably necessary.

13 The first is a Rule to Show Cause that
14 arises from this Court's Order of January 29, 2019
15 that directed my client Elle McDonald to produce the
16 decedent's cell phone and the decedent's laptop.

17 Ms. McDonald is here and is prepared to
18 testify to show cause. She has provided the laptop,
19 and her testimony is expected to elicit that she
20 cannot locate the cell phone which is why she has
21 not produced it.

22 When we were last here on this, your
23 Honor, it was April 15 she was called before the
24 Court. We informed the Court that her father was



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1 hospitalized, and you asked basically for us to
2 provide you with documentation and her testimony to
3 substantiate that when we were here. I have
4 documents, your Honor.

5 The question for me is simply -- you
6 called for us to produce them in the Order. I can
7 produce them to counsel and you. They include a
8 photograph of her father, various excerpts from
9 medical records and communications from people
10 verifying that she was, in fact, in Arizona.

11 The issue is, of course, in the two
12 weeks I've had, I don't have foundational witnesses
13 for each of those documents so I suppose I would
14 leave it to your Honor. I'm happy to provide you
15 with copies of those, elicit testimony on them. I'm
16 not sure I can lay a full foundation for each of
17 those documents, your Honor, asked me to produce.
18 I'll leave it to you as to what you think is best
19 with regard to that.

20 Then we are here also on a Citation
21 issued in January of 2018. That Citation overlaps
22 considerably with a Rule to Show Cause. It seeks
23 production of the laptop which has now been produced
24 and is the subject of the Rule to Show Cause. It



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1 seeks production of the phone which, again, is the
2 subject of the Rule to Show Cause, and then it seeks
3 production of some items of personal property which
4 I'm expecting to elicit testimony from Ms. McDonald
5 who is here today that she does not have possession
6 of those items, and that's what is up for today
7 unless counsel has anything further.

8 MS. GOSSELIN: Yes, we do. We are revisiting
9 the issue of fingerprinting. Apparently the second
10 try at fingerprinting was also unsuccessful, and
11 this morning we spoke with Officer Hoffman, and he
12 is requesting that Ms. McDonald go over to the jail
13 today and be fingerprinted at intake or booking, and
14 he said apparently there had been some internal
15 error in their documentation, and he said that the
16 only way it can be done on a timely basis is if she
17 reports directly to the jail at booking.

18 THE COURT: I think it was Deputy Hoffman that
19 delivered an envelope the day that she -- it was
20 Lieutenant Tindall.

21 MS. GOSSELIN: Correct. He is the one that
22 actually took the fingerprints.

23 THE COURT: And he delivered in camera an
24 envelope that I have not opened yet, but he said



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1 that the originals were submitted for maybe FBI
2 processing. I'm not sure.

3 MS. GOSSELIN: It's my understanding that what
4 happened is they checked the wrong box in their
5 computer system, and a bill was sent to Ms. McDonald
6 saying nothing would be released or done until such
7 time as she paid the processing fee, and that was
8 also in error, and now they're requesting that she
9 report to booking.

10 MR. O'KELLEY: Your Honor, if I may.

11 THE COURT: Go ahead.

12 MR. O'KELLEY: She's submitted to
13 fingerprinting twice at this point, and it's my
14 understanding she is here today and can explain
15 herself, if your Honor wishes, that she actually has
16 fingerprints on record with the FBI separate and
17 apart from these proceedings which apparently with a
18 written authorization can be provided to the
19 authorities, if that's what's necessary, and rather
20 than having her submit to a third fingerprinting,
21 that's what I had asked under the circumstances.

22 She's already tried to comply twice, and
23 this one -- and I would argue the first -- was
24 through no fault of her own. Three times to have to



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1 submit to fingerprinting when I understand all
2 that's necessary is a written authorization to
3 supply them because they're already of record with
4 the FBI would solve that problem.

5 MS. GOSSELIN: Your Honor, we respectfully
6 suggest that that would not be acceptable. We need
7 to have the fingerprints done here in Kane County.

8 It's our understanding that Ms. McDonald
9 with the first fingerprinting deliberately treated
10 her fingers with a substance to impede the process
11 of fingerprinting, and the whole purpose of getting
12 the fingerprints is to check her criminal
13 background, not just the fact of having the prints.
14 So that is what we are looking for, and the reason
15 for the fingerprinting is because she does have a
16 criminal background, and she has requested in the
17 past to be appointed administrator of the estate,
18 and if she is convicted of a felony, she cannot
19 pursue that, and that is the whole purpose of having
20 the fingerprinting.

21 MR. O'KELLEY: There's much I dispute in that,
22 your Honor. I won't get into it except to say it's
23 my understanding that they can be provided with the
24 fingerprints that already exist is what I'm saying.



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1 To have her have to submit for a third time to
2 fingerprinting when fingerprinting can be provided
3 to them which my understanding they can do the same
4 background search would alleviate that problem.

5 MS. GOSSELIN: Your Honor, we simply have no
6 faith that the offered fingerprints are in any way,
7 shape or form Ms. McDonald's. Given the history of
8 this case, we need our own fingerprints.

9 THE COURT: I have no faith in the Sheriff's
10 Office of getting the fingerprints, although there
11 is some dispute as to how many times she has
12 actually been fingerprinted at the Sheriff's. They
13 say this will be the third time, and you say it will
14 be the second time.

15 MS. GOSSELIN: In our experience it's the
16 second time.

17 THE COURT: Well, I don't know what happened
18 the first time, and that's -- nobody has given me
19 any basis for that speculation; however, I think
20 with the -- at least with the allegations, unproven
21 though they may be, I think I will -- and now that
22 she is here and not trying to get out of town to
23 catch a plane, as far as I know, which she was the
24 day of the fingerprinting, and maybe that caused



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1 some hurried processes over there, I'll let her go
2 at her convenience today or tomorrow or -- or
3 Friday. I don't know where she is going back to
4 today, but I will order the appearance at the Kane
5 County Sheriff's Office and/or Jail for
6 fingerprinting within 48 hours.

7 MR. O'KELLEY: Judge, I have one request.

8 THE COURT: Go ahead.

9 MR. O'KELLEY: Is it possible -- basically
10 it's my understanding she is in school. She can
11 elaborate on this. She is here. It's difficult for
12 her to be here. She does have something she's
13 supposed to submit tomorrow, and, again, she can
14 speak to this better than me.

15 Under the circumstances could you give
16 her 14 days to do this so that she would have a
17 window of time if she has to go back tonight or
18 tomorrow to get this done given that this is the
19 third time she has had to submit to fingerprints?

20 THE COURT: I'm not sure where she is saying
21 she's staying these days and if she's in Arizona or
22 New York or something like that, then what's the
23 difference?

24 MR. O'KELLEY: The difference is if she had to



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1 travel back in order to get it done, then she would
2 have the time in which to do it. That's all I'm
3 asking, your Honor. She can explain, if your Honor
4 would like, where she has to be better than I can.
5 If you're -- I understand. If it's 48 hours, it's
6 48 hours.

7 THE COURT: All right. Let's see what
8 happens, and we'll revisit this at the end of the
9 hearing, but you can put on your evidence now.

10 Is there any response to the Rule to
11 Show Cause proposal that counsel for Ms. McDonald
12 has proposed?

13 MS. GOSSELIN: We would like -- we can
14 certainly review what he has, and then we can make a
15 decision without knowing what he intends to present.

16 MR. WARMBOLD: I would like an opportunity to
17 at least see what documentation we have, Judge, and
18 then we can see.

19 THE COURT: On the Citation you mean?

20 MR. WARMBOLD: On the Rule to Show Cause with
21 respect to her trip to Arizona and --

22 MS. GOSSELIN: And her actual presence there.

23 MR. WARMBOLD: -- the family member's
24 hospitalization. The Court Order that was entered



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1 requested specific information to be provided to the
2 Court, and opposing counsel has indicated there may
3 be some deficiencies in that paperwork. We would
4 like to at least look at it.

5 MR. O'KELLEY: I wouldn't say deficiencies.

6 THE COURT: Do you want to let them do that
7 before --

8 MR. O'KELLEY: That's fine.

9 THE COURT: -- before we get into the hearing?

10 MR. O'KELLEY: Of course. My only issue is
11 under and what circumstances we need to provide
12 evidentiary foundations for these documents. Your
13 Honor just requested documents in the Court's Order
14 which I'm happy to provide to counsel and to you.

15 The question is -- and I can have Elle
16 testify at least as best she can as to some of those
17 documents. Others, medical records, we've had two
18 weeks. We don't have a foundational expert to come
19 here and lay a foundation for medical records
20 establishing her father was in the hospital.

21 What I'd ask under the circumstances,
22 particularly given that this is also a Citation
23 proceeding with relaxed evidentiary standards is
24 that we would be able to provide those to the Court



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1 simply to demonstrate why she was not here last time
2 in addition to her testimony.

3 THE COURT: Will they be able to review them
4 first and then if they have any cross-examination
5 with regard to that subject area, then they can
6 visit that at the time --

7 MR. O'KELLEY: Understood.

8 THE COURT: -- subject to any objections. Why
9 don't we -- if you can provide your documents to the
10 Bailiff, she can make a set of copies or two.

11 MR. O'KELLEY: I have several copies. I'm
12 happy to provide to them and to your Honor.

13 THE COURT: Let's take a 10 or 15 minute
14 recess, and they can review those. You can review
15 it with your client, whatever, and then we'll come
16 back for taking of evidence.

17 MR. O'KELLEY: Understood.

18 MS. GOSSELIN: Very good.

19 THE COURT: Thanks.

20 (WHEREUPON, a recess was had.)

21 THE COURT: All right. Are we ready to go
22 then with witnesses?

23 MR. O'KELLEY: Sure, your Honor.

24 THE COURT: Okay.



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1 MR. O'KELLEY: The only question I have is we
2 have a Rule to Show Cause. We have a Citation.
3 There is going to be some overlapping issues. I
4 don't know if your Honor wants a combined hearing or
5 if you want to separate them even though it may be
6 somewhat duplicative, whatever your Honor prefers.

7 THE COURT: The Rule is based on the Citation
8 or failure to comply with an Order pursuant to the
9 Citation?

10 MR. O'KELLEY: That's exactly right, your
11 Honor.

12 MS. GOSSELIN: No, because --

13 THE COURT: Let him finish his sentence, and
14 then you can object.

15 MR. O'KELLEY: My understanding subject to
16 whatever counsel has to say is the Court's Order
17 compelled the production of a laptop and a cell
18 phone. That's the issue of the Rule to Show Cause
19 along with explaining why she was not present last
20 time and that the Citation also seeks, among other
21 things, information relating to that same laptop and
22 cell phone, among other items of personal property.

23 THE COURT: Okay. And the Rule has already
24 issued just to clarify.



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1 MS. GOSSELIN: Yes.

2 THE COURT: A Rule has issued for her to show
3 cause.

4 MS. GOSSELIN: Yes, your Honor.

5 THE COURT: And so, therefore, we're not
6 starting with the Petitioner on that Rule bringing
7 her in as an adverse witness to establish a prima
8 facie case first.

9 MR. O'KELLEY: As a Rule, correct, your Honor.
10 It would be me eliciting testimony in satisfaction
11 of the Rule to Show Cause.

12 THE COURT: Showing cause. Okay. All right.
13 You were going to say, Ms. Gosselin.

14 MS. GOSSELIN: What I was going to say is
15 there have been two Citations issued, and the Rule
16 that was issued was based on her failure to comply
17 with an Order to turn over the laptop and the
18 computer -- the laptop and the phone.

19 The Citation that we're proceeding on
20 now is one that was filed in January of 2018 and has
21 never been up before, and while it does include the
22 cell phone and the laptop, there are a number of
23 other items involved. So this Citation has nothing
24 to do with the Rule. It's just there were



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1 additional filings that took place after this was
2 filed, but never -- the Citation was never issued --

3 THE COURT: Okay.

4 MS. GOSSELIN: -- until April of this year,
5 and in the interim, a different Order had been
6 entered requiring her to turn over the laptop and
7 the iPhone, and that is what is the subject of the
8 Rule, but this Citation is a completely different
9 proceeding from that which elicited the Rule.

10 THE COURT: What kind of Citation is it,
11 Citation to Recover under the --

12 MS. GOSSELIN: And to recover assets.

13 THE COURT: Okay. That would be your direct
14 examination --

15 MS. GOSSELIN: Correct.

16 THE COURT: -- as the administrator, I guess.

17 MS. GOSSELIN: Correct.

18 THE COURT: Attorney for the administrator.

19 MS. GOSSELIN: Correct.

20 THE COURT: I don't know about the
21 overlapping. I think we should take care of the
22 Rule first.

23 MR. O'KELLEY: Sure.

24 THE COURT: And then if this Citation needs to



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1 be done in open court, Citation to -- I assume it's
2 a Citation to Discover first that might be converted
3 to a Citation to Recover under Section 16 of the
4 Probate Act.

5 MR. O'KELLEY: It's characterized as a
6 Citation to Recover, but we were ordered by the
7 Court to be here for hearing on that Citation, and
8 she is here prepared to testify so if we treat it as
9 a Citation to Discover for the purpose of her
10 testimony, I have no objection.

11 THE COURT: Okay. Let's -- can I see the last
12 Court Order --

13 MR. O'KELLEY: Yes.

14 THE COURT: -- if you have a copy?

15 MS. GOSSELIN: There is -- there were two
16 Orders that were entered, but that's the subject
17 Order.

18 THE COURT: Okay. Let's proceed with the
19 first listed one in the Order which is Rule to Show
20 Cause, and I assume that will be Mr. O'Kelley's
21 witness --

22 MR. O'KELLEY: Yes, your Honor.

23 THE COURT: -- first, and then after we're
24 done with that, even though there might have been



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1 some overlap, we will proceed with Ms. Gosselin's
2 direct on the Citation and see if we can keep those
3 separate more or less. Okay.

4 So if you would call your witness then,
5 Mr. O'Kelley.

6 MR. O'KELLEY: Yes, your Honor. I call
7 Ellizzette McDonald.

8 THE COURT: Okay. I'll have the Clerk swear
9 the witness in.

10 (WHEREUPON, the witness was duly sworn.)

11 THE COURT: Okay. Mr. Kelly you may proceed.

12 ELLIZZETTE MCDONALD,

13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. O'KELLEY:

17 Q. Ms. McDonald, can you please tell us
18 your full name and spell it for the record?

19 A. Ellizzette Duvall McDonald,
20 E-l-l-i-z-z-e-t-t-e D-u-v-a-l-l M-c-D-o-n-a-l-d.

21 Q. Elle, you're a party to this matter; is
22 that right?

23 A. Yes.

24 Q. Were you ordered to be present in court



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TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD IIIMay 01, 2019
20

1 on April 15, 2019?

2 A. Yes.

3 Q. Were you able to be in court on
4 April 15?

5 A. No.

6 Q. Please make sure I get the question out
7 before you respond.

8 A. Sorry.

9 Q. Were you able to be in court on
10 April 15, 2019?

11 A. No, I was not.

12 Q. Why is that?

13 A. My father was hospitalized.

14 Q. When was your father hospitalized?

15 A. He was taken initially to the hospital
16 emergently on April 5, and he was -- he is actually
17 still in the hospital.

18 Q. What was he hospitalized for?

19 A. He sustained a very serious fall and
20 fractured his pre-frontal bone as well as -- which
21 caused -- it went all the way back to his parietal
22 bone, and he sustained two subdural hematomas which
23 required neurosurgery, and he also has severe
24 cervical stenosis of C4 through C6.



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1 Q. Now, where did your father live when he
2 suffered these injuries?

3 A. They were at their other home in
4 Arizona.

5 Q. What was the date he suffered these
6 injuries?

7 A. I believe it was -- well, the evening of
8 the 5th.

9 Q. That's April 5, 2019?

10 A. Yes.

11 Q. How long was your father hospitalized?

12 A. He is still hospitalized.

13 Q. He has been hospitalized since April 5?

14 A. He has been continually hospitalized,
15 sir.

16 Q. Did you visit your father while he was
17 in the hospital?

18 A. Yes, I did.

19 Q. When did you first visit your father in
20 the hospital?

21 A. I arrived the morning of the 6th.

22 Q. Now --

23 A. April 6th.

24 Q. Where was your father hospitalized on



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1 April 6, 2019?

2 A. Mayo in Scottsdale, Arizona.

3 Q. That's the Mayo Clinic?

4 A. Mayo Clinic in the north surgical
5 service.

6 Q. Where was he originally admitted for his
7 injuries?

8 A. It was a non-Banner facility. I believe
9 it was called Boswell, and he was transferred from
10 the emergency room at Boswell Mayo.

11 Q. Boswell is a hospital in Arizona?

12 A. Yes, sir.

13 Q. Where is he now?

14 A. He is still in Arizona at Mayo.

15 Q. How long did you visit your father in
16 Arizona while he was hospitalized?

17 A. It was a little over two weeks. I left
18 on the 17th.

19 Q. You left from Arizona on the 17th?

20 A. Yes.

21 Q. You said you arrived on the 6th, I
22 believe?

23 A. Yes, sir.

24 Q. So between the 6th and the 17th you were



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TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD IIIMay 01, 2019
23

1 in Arizona with your hospitalized father?

2 A. Yes, sir.

3 Q. How did you travel to Arizona to visit
4 your father?

5 A. My girlfriend drove all -- we just drove
6 straight through.

7 Q. Who is that girlfriend?

8 A. Sarah.

9 Q. Sarah's last name?

10 A. Obannon, O-b-a-n-n-o-n.

11 Q. Where did you stay while --

12 A. At my mother and father's home.

13 Q. Just to be clear, you're saying you were
14 at your mother and father's home while you were
15 visiting your father in the hospital?

16 A. Correct.

17 Q. Where is your mother and father's home,
18 at least the city?

19 A. Sun City West.

20 Q. That's where you stayed for the entirety
21 of your visit with your father?

22 A. Yes, sir.

23 Q. What is your father's current condition?

24 A. Grave. He's continuing to be watched by

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1 neurosurgery as well as we're hopeful that we can
2 continue progressing into eventually moving him back
3 to the rehab wing of the neurosurgical unit, but
4 last night he was having -- he was transferred back
5 to the hospital side of the neurosurgical unit.

6 Q. What was his treatment during the time
7 you were there generally speaking?

8 A. Evacuation of two subdural hematomas,
9 and he's continuing to be treated for the cervical
10 stenosis.

11 Q. At or about April 15, 2019 --

12 A. What day?

13 Q. At or about April 15, 2019 did you
14 believe that you could leave your father at the
15 hospital to be in court for these proceedings?

16 A. Absolutely not.

17 Q. Why not?

18 A. There was a reasonable belief that my
19 father may not survive this condition, this
20 situation.

21 Q. What was that belief based on?

22 A. His pre-existing condition and the
23 comorbidities that are associated with this in
24 consideration of his pre-existing condition.



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1 Q. Now, you are here today; is that
2 correct?

3 A. Yes, sir.

4 Q. Why are you here today but you were
5 unable to be here on April 15th?

6 A. I was told, again, that it was by demand
7 that I be here even though I again -- once again,
8 this is interfering with my own clinical
9 responsibilities.

10 Q. I would like to show you some documents,
11 if that's okay.

12 A. Sure.

13 (WHEREUPON, said document was marked
14 Exhibit No. 1, for identification.)

15 BY MR. O'KELLEY:

16 Q. I'm now showing you what has been marked
17 as Exhibit 1. Do you recognize this?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's a photograph of my father when he
21 presented to emergency -- actually this was at Mayo,
22 after he was transported to Mayo in the wee hours of
23 the morning.

24 Q. Do you know when this photograph was



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1 taken?

2 A. It would have been on the 5th because --
3 4th -- between the 5th and 6th. Like I say, these
4 days became blurry, but yes.

5 Q. You testified --

6 A. It was the night of his intake that he
7 was admitted.

8 Q. You testified, I believe, that you first
9 arrived at the hospital on or about April 6, 2019;
10 is that correct?

11 A. Correct.

12 Q. Did you have an opportunity to observe
13 your father's condition when you visited on April 6,
14 2019?

15 A. I did.

16 Q. Does this picture accurately, fairly and
17 completely portray your father's condition when you
18 saw him on April 6, 2019?

19 A. He obviously had -- here he had not yet
20 been treated. By the time I saw him, he had been
21 treated because he was treated emergently.

22 Q. But does this photograph fairly and
23 accurately and completely portray his condition when
24 you saw him?



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1 A. Yes, sir.

2 MR. O'KELLEY: Your Honor, I would ask that
3 Exhibit 1 be admitted into evidence.

4 THE COURT: Any objection?

5 MR. WARMBOLD: I object to foundation.

6 MR. O'KELLEY: Your Honor, the foundation --

7 THE COURT: I'll admit it. Go ahead.

8 (WHEREUPON, said document, previously
9 marked Exhibit No. 1, for
10 identification, was offered and received
11 in evidence as Exhibit No. 1.)

12 MR. O'KELLEY: Your Honor, the foundation
13 under Illinois law for a photograph is does the
14 picture fairly and accurately and completely portray
15 the image. The person need not be the one who took
16 the photograph or even be present when the
17 photograph is taken.

18 THE COURT: Admitted subject to cross.

19 (WHEREUPON, said document was marked
20 Exhibit No. 2, for identification.)

21 BY MR. O'KELLEY:

22 Q. I'm going to show you another document,
23 Ms. McDonald, if that's okay. I'm now showing you
24 what's been marked as Exhibit 2.



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1 Do you recognize this document?

2 A. I do.

3 Q. What is this document?

4 A. It's the neuroradiological report done
5 by Dr. Wepler after a subsequent CT had been done on
6 my father. It's a study. It's a -- yes. It's a
7 falaxial study.

8 Q. How did you obtain this document?

9 A. My mother provided it to me through the
10 staff there at Mayo.

11 Q. Mayo where your father was hospitalized?

12 A. Yes, sir.

13 Q. Does this document have a date on it?

14 A. It actually has several dates. One is
15 4/5, the admitting date. This was generated from
16 their system, from their CRN system on 4/11. So,
17 yes, those are the two dates that I see immediately.

18 Q. What is your understanding of what this
19 document reflects?

20 A. This document further substantiates that
21 there was -- I don't know how deep you want me to go
22 into the clinical aspects, but there's no
23 ventricular bleeding; however, it was unencapsulated
24 so there was bleeding into the brain.



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TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD IIIMay 01, 2019
29

1 MS. GOSSELIN: Objection.

2 BY THE WITNESS:

3 A. The largest subdural hematoma was 8.5 --

4 MS. GOSSELIN: Objection.

5 THE COURT: Just a second.

6 MR. WARMBOLD: This is all hearsay.

7 BY THE WITNESS:

8 A. This isn't hearsay. Sorry.

9 THE COURT: Your lawyer will respond to
10 objections.

11 MR. WARMBOLD: The testimony that's being
12 elicited to the Court is in regard to statements
13 that someone else reported to be Dr. Gregory Wepler
14 made on this alleged date. I can't cross-examine a
15 piece of paper, your Honor. I could cross-examine
16 Ms. McDonald, but I can't cross-examination Dr.
17 Wepler.

18 THE COURT: Sustained.

19 (WHEREUPON, said document was marked
20 Exhibit No. 3, for identification.)

21 BY MR. O'KELLEY:

22 Q. I'm now showing you what's been marked
23 as Exhibit 3. Do you recognize this document?

24 A. Yes, sir.



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1 Q. What is this document?

2 A. It is correspondence between myself and
3 Dr. Bernard Bendok, the chairman of neurosurgery at
4 Mayo.

5 Q. Now, is there a date on this document?

6 A. Yes, there is.

7 Q. What is that date?

8 A. April 5.

9 Q. Now, how did you obtain this document?

10 A. I did a screen shot for my counsel's
11 offices, law offices.

12 Q. Where did that screen shot come from?

13 A. It's an internal messaging system within
14 -- it's a messaging system I have.

15 Q. Is it Facebook?

16 A. No. It's another type of messenger.
17 It's through the APA.

18 Q. Now, is this a communication basically
19 between you and another person?

20 A. Yes, sir.

21 Q. Are the grayed-out portions your own
22 communications?

23 A. Yes, sir.

24 Q. Now, the date of this communication, if



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1 I'm understanding correctly, is April 5, 2019?

2 A. Yes, sir.

3 Q. Is this a true, complete and accurate
4 copy of the communication that you made on April 5,
5 2019?

6 A. Yes, sir.

7 MR. O'KELLEY: Your Honor, I would ask that
8 Exhibit 3 be admitted into evidence.

9 THE COURT: Any objection?

10 MR. WARMBOLD: I object to foundation, Judge.

11 THE COURT: Response.

12 MR. O'KELLEY: Your Honor, I don't know what
13 the reported deficiency is in the foundation. She
14 has testified this is a true, complete and accurate
15 copy of her own communication and the date of that
16 communication and it's -- not that hearsay has been
17 raised, but it's not been offered for the truth of
18 the matter asserted. It's been offered to establish
19 a date upon which she knew of her state of mind her
20 father's hospitalization which is relevant to the
21 issue of this Rule to Show Cause.

22 THE COURT: Any further on the foundation,
23 what you're missing?

24 MR. WARMBOLD: Well, Judge, there hasn't been



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1 any testimony as far as where this comes from. We
2 have the vague answer that this is from some sort of
3 messaging system. I don't know what that means. Is
4 this from a cell phone? Is this from a computer? I
5 don't know. We don't have that testimony.

6 With respect to what -- if the statement
7 contained within this purported message is not being
8 offered for the truth of the matter asserted, so be
9 it, but I don't think there is sufficient foundation
10 for it to be admitted into evidence.

11 THE COURT: Sustained. Provide some further
12 foundation as to time and place and sender and
13 receiver, et cetera.

14 MR. O'KELLEY: Understood.

15 BY MR. O'KELLEY:

16 Q. Ms. McDonald, can you further explain
17 from what source you generated this particular
18 document?

19 A. Oh, it was -- I was -- that syncs with
20 my phone as well, but I typed it on the computer
21 because I was simultaneously on the phone with the
22 emergency room doctor at the time.

23 Q. Help me understand. When you generated
24 this particular document when was that?



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- 1 A. The evening of the 5th.
- 2 Q. When you generated this document?
- 3 A. Oh, when I made the screen shot for you?
- 4 Q. Correct.
- 5 A. Monday.
- 6 Q. So that would have been --
- 7 A. Just this past Monday.
- 8 Q. I believe that's the 28th or the 29th?
- 9 A. Yes.
- 10 Q. Now, can you describe for me exactly how
- 11 you generated this document?
- 12 A. Through Snaggot.
- 13 Q. What is Snaggot?
- 14 A. It's a program whereby you can grab
- 15 things off the landing platform of a page.
- 16 Q. Now, when you created this original
- 17 message, how did you do that?
- 18 A. I was on the phone, and I went to my
- 19 computer since I couldn't use my phone to talk to
- 20 one doctor and type to another, and I typed a
- 21 message to Dr. Bendok.
- 22 Q. What was the program you used to type
- 23 that message?
- 24 A. It's -- I don't know the name of it. I

1 just know the symbol.

2 Q. What is the symbol?

3 A. It looks like a lightening bolt
4 sideways.

5 Q. Is that Facebook messenger or another
6 messenger service?

7 A. I would have to look. I would be
8 speculating. I just have that symbol on my thing,
9 and I just hit it.

10 Q. Now, when you generated this, this is
11 what you typed at that time?

12 A. Yes, sir.

13 Q. And that time was April 5, 2019?

14 A. Yes, sir.

15 Q. At 7:42 p.m.?

16 A. Yes, sir.

17 Q. And these gray squares reflect a true,
18 complete and accurate copy of what you typed into
19 the system on April 5, '19?

20 A. Yes, sir, 100 percent.

21 MR. O'KELLEY: I would offer again Exhibit 3
22 into evidence.

23 THE COURT: Anything further?

24 MR. WARMBOLD: Just for clarification,



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1 purposes, this is being admitted for proof as to the
2 witness' state of mind, not for the truth of the
3 statements contained within this document?

4 THE COURT: I have not seen it.

5 MR. O'KELLEY: I can provide you with a copy,
6 your Honor.

7 THE COURT: If it's admitted, I'll see it,
8 but --

9 MR. WARMBOLD: I just want clarification as
10 far as what purpose this is being sought to be
11 admitted for. That's all. If it's being sought for
12 the truth of the matter asserted within here, I
13 would be objecting to hearsay.

14 MR. O'KELLEY: So my response to that, your
15 Honor, is this. This document to my review -- to my
16 view reflect's Elle's understanding that her father
17 was hospitalized at that time and on this date.
18 That's what I am offering it for.

19 THE COURT: All right. I'll admit it subject
20 to cross again. It's Exhibit 3, I think.

21 MR. O'KELLEY: Yes.

22 (WHEREUPON, said document, previously
23 marked Exhibit No. 3, for
24 identification, was offered and received



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1 in evidence as Exhibit No. 3.)

2 BY MR. O'KELLEY:

3 Q. Ms. McDonald, when did you return from
4 Arizona again?

5 A. We left on the 17th.

6 Q. When you say "we," who did you travel
7 with?

8 A. Sarah.

9 Q. So Sarah stayed with you throughout?

10 A. She did.

11 Q. Where did you travel when you left
12 Arizona?

13 A. We passed through Illinois so I could
14 get my dogs, but then I had to return to Virginia.

15 Q. What is your father's current condition
16 to the best of your knowledge?

17 A. Grave.

18 Q. Why?

19 A. Stable but grave.

20 Q. Why grave?

21 A. Because he has comorbidities, and there
22 are other complications that have arisen due to his
23 pre-existing condition.

24 Q. Did you understand the importance of



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1 being present in court on April 15, 2019?

2 A. Absolutely not.

3 Q. You did not understand the importance of
4 being present?

5 A. I didn't -- what I understood was that I
6 needed to hand over my computer which I did, but I
7 didn't know I needed to be here to physically hand
8 it over.

9 Q. Since you brought up the computer, I
10 want to segway to that.

11 Did you at any time have access to John
12 McDonald, III's computer?

13 A. John's computers were taken from him
14 well before -- like his personal personal computers,
15 John never had in his presence down in Illinois or
16 New York. Those were taken by Shawn and Brett
17 months before, and they refused to return them to
18 him. This computer was the company computer.

19 Q. Stop for just a moment. You did have
20 possession of a computer, correct?

21 A. Yes, sir.

22 Q. A laptop computer?

23 A. Yes, sir.

24 Q. Who did that computer belong to?



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1 A. The company.

2 Q. What's the company?

3 A. Well, we were using it for EDM.

4 Q. Who is we?

5 A. John and I and Jason and several people
6 actually, but then when we traveled we used that one
7 because it was so much lighter just to carry one
8 laptop rather than everybody carrying a laptop.

9 Q. Now, was that the only computer that you
10 have that was John's in whole or in part?

11 A. That was the only one John used because
12 he was the -- because I'm not fond of the Apple
13 platform.

14 Q. It was an Apple computer?

15 A. Correct.

16 Q. Now, was that the only computer of
17 John's in whole or in part that you had in your
18 possession?

19 A. Yes, sir.

20 Q. And have you produced that computer?

21 A. Yes, sir.

22 Q. Was there any delay in producing that
23 computer?

24 A. The only delay was the fact of having to



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1 produce a computer that's not -- it's ridiculous to
2 have to turn over a computer that belongs to a
3 company that has nothing to --

4 Q. What about John's iPhone, did you ever
5 have that in your possession?

6 A. I did.

7 Q. Now, we are here in part in response to
8 a Citation proceeding; is that correct?

9 A. Yes, sir.

10 Q. Now, when you responded to the Citation
11 in this matter, did you indicate that you had John's
12 iPhone?

13 A. When I responded to the Citation?

14 Q. Correct. There was a Citation written
15 issued in this matter. When we responded in writing
16 on your behalf, did you indicate that you had John's
17 iPhone?

18 A. I believe I had the phone since that --
19 what was it -- January of 2018 when --

20 Q. My question is: did you indicate you had
21 it?

22 A. Yes.

23 Q. Why did you indicate you had it?

24 A. Because I believed that I still had it.



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1 Q. You were previously deposed in this
2 matter; is that correct?

3 A. Yes, sir.

4 Q. Did you indicate in the course of that
5 deposition that you believed you had John's iPhone?

6 A. Yes.

7 Q. Why did you say so?

8 A. Because that's what I believed to be
9 true.

10 Q. Now, have you subsequently come to learn
11 that that is untrue?

12 A. Yes.

13 Q. Have you come to learn that do you not
14 have possession of John's iPhone?

15 A. Yes.

16 Q. Now, can you explain for me how that
17 came to be?

18 A. Well, because when I went to go locate
19 the phone, the phone wasn't where I had -- where I
20 had left it had already been packed up by my mom and
21 several other people that --

22 Q. Take a step back. Where had you left
23 it?

24 A. That January I put it on the table in



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1 the back room.

2 Q. Is this January, 2018?

3 A. 2018.

4 Q. And is this in Paris, Illinois or
5 another residence?

6 A. Paris, Illinois.

7 Q. Where was the phone?

8 A. That was the last place I had seen it.

9 Q. So in Paris, Illinois -- January, 2018
10 there is a residence in Paris, Illinois; is that
11 correct?

12 A. There was, yes.

13 Q. Where was the phone in the residence in
14 Paris, Illinois in January of 2018?

15 A. I put it on the desk in the -- well, the
16 table in the back office.

17 Q. In that residence?

18 A. Correct.

19 Q. And that was the last time you saw that
20 phone?

21 A. Correct.

22 Q. When was the next time you looked for
23 that phone?

24 A. I don't know. April, May when I went to



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1 get the last bits of my things. Those dates were so
2 blurry. I was just -- to be honest, I would be
3 speculating. I was just --

4 Q. I don't want you to speculate.

5 A. Okay. Well, I was just --

6 Q. It's my understanding there was a move,
7 is that correct, from some of the items in Paris?

8 A. Yes.

9 Q. Can you explain that?

10 A. Well, the house -- prior to John and I
11 going there, the house was always going to be sold
12 or renovated at the very least. The only reason we
13 were there was it was kind of a launching pad for
14 all the other things we were doing. We weren't
15 living living there.

16 Q. So as to items that were in the
17 residence were they packed for a move or what
18 happened to them?

19 A. Most of the house was already packed up,
20 yes. In fact, there was very little there at all.

21 Q. So when you searched for the phone where
22 did you search for it?

23 A. I just went into the back room, and
24 everything had already been emptied out of the back



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1 room. And I said, "What happened to all the boxes?"

2 And she said, "Oh, well, some of them
3 went to New York, and some of them were the things
4 that we had to get rid of."

5 MR. WARMBOLD: Objection.

6 THE COURT: Sustained.

7 BY MR. O'KELLEY:

8 Q. You don't need to speak as to what other
9 people told you.

10 A. Okay.

11 Q. Following up, were you able to locate
12 the phone when you looked for it?

13 A. No.

14 Q. Where have you looked for it?

15 A. I've emptied every single book box that
16 I even knew that I didn't even put it in because
17 those boxes were already gone, but I thought maybe
18 because I was so emotionally distraught and
19 everything for some reason maybe it was one place or
20 the other. I've gone through everything.

21 I've gone through papers, even the box
22 of pots and pans thinking maybe by accident I picked
23 it up and put it there or something and didn't -- I
24 mean --



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1 Q. Have you been able to locate that phone?

2 A. No, sir.

3 Q. As you sit here today do you know where
4 the phone is?

5 A. No, I don't.

6 Q. If you were ordered to produce that
7 phone, would you be able to do so?

8 A. No, no.

9 MR. O'KELLEY: I have nothing further, your
10 Honor.

11 THE COURT: Cross.

12 MR. WARMBOLD: Thank you, Judge.

13 CROSS-EXAMINATION

14 BY MR. WARMBOLD:

15 Q. Ms. McDonald, I want to go back. Let's
16 start with your time in Arizona.

17 You stated that you left for Arizona on
18 April 6th of this year?

19 A. No. That's not what I stated.

20 Q. When did you leave, ma'am?

21 A. Shortly after that evening in speaking
22 to my mother. I arrived on April 6.

23 Q. What's that evening? Are you referring
24 to April 5th then?



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1 A. Yes.

2 Q. And you left with your friend, correct?

3 A. Correct.

4 Q. What is your friend's full name?

5 A. Sarah Obannon.

6 Q. Can you spell that last name?

7 A. O-b-a-n-n-o-n.

8 Q. Do you spell Sarah -- is the correct

9 spelling S-a-r-a-h?

10 A. Yes.

11 Q. How do you know Sarah?

12 A. She's known the family for well over 15,

13 20 years.

14 Q. When you say "the family," you're
15 referring to your family?

16 A. Her father and my father were friends,
17 and she is originally from Virginia. There's a lot
18 of crossing over.

19 Q. Where does she live now?

20 A. Some of the time in Paris.

21 Q. Paris, Illinois?

22 A. Yes, sir.

23 Q. Where does she live the rest of the
24 time?



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1 A. Do I need to provide that information?

2 MR. O'KELLEY: If the question is asked, you
3 need to --

4 BY THE WITNESS:

5 A. I don't have the exact address of where
6 she is the other portions of the time. She also has
7 family that she sees in Virginia.

8 BY MR. WARMBOLD:

9 Q. Does that mean she also lives in
10 Virginia or is your answer you don't know?

11 A. I don't know what she considers her
12 permanent address.

13 Q. What is her address in Paris, Illinois?

14 A. I don't have that address.

15 Q. How long have you known her for?

16 A. Since the '80s at least, maybe even a
17 little longer.

18 Q. How did it come about that she was going
19 to be driving you to Arizona?

20 A. I wasn't able to get a flight that night
21 because there was no flights leaving that evening so
22 she just said, "Let's just drive. We can get there
23 before you would be able to get a flight the next
24 day and be there."



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1 So we just -- I literally just grabbed a
2 few things, and we hopped in the car and headed
3 towards Arizona.

4 Q. So that doesn't exactly answer my
5 question. I was asking how did it come about that
6 she was going to drive you to Arizona?

7 A. That's how it came about.

8 Q. How did she find out that your father
9 was in the hospital?

10 A. She was there -- I called her to let her
11 know that I was going to have to leave because my
12 father had been hospitalized, and she came over and
13 said, "Have you been able to get a flight?"

14 I said, "No."

15 She said, "Well, come on. Let's go.
16 I'll drive you."

17 Q. What time did you leave Paris, Illinois?

18 A. Oh, I don't know what time it was. It
19 was after midnight. That I do know.

20 Q. So does that mean you left technically
21 on April 6, 2019?

22 A. Once again, I did not leave on
23 April 6th. I arrived in Arizona on April 6th.

24 THE COURT: Ma'am, just a minute. Settle down



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1 and back off the microphone, please.

2 THE WITNESS: Okay.

3 MR. WARMBOLD: May I rephrase my question,
4 your Honor, if it was confusing or if the Court
5 Reporter can read it back to the witness.

6 THE COURT: One or the other.

7 MR. WARMBOLD: I can rephrase it.

8 THE COURT: Go ahead and rephrase.

9 BY MR. WARMBOLD:

10 Q. Ms. McDonald, you indicated that you
11 left with your friend Sarah sometime after midnight,
12 so my question to you was: being that you left
13 sometime after midnight, would I be right in saying
14 you left on April 6th --

15 A. No, you would not.

16 Q. -- 2019?

17 A. No, you would not.

18 Q. What date was it then that you left?
19 You're saying you left sometime in the early morning
20 of April 5th?

21 A. Correct.

22 Q. What time did you arrive in Arizona?

23 A. It was getting -- the sun was coming up.

24 Q. So does that mean it was sometime in the

1 morning on April 6th you arrived?

2 A. Yes, sir.

3 Q. When the sun was coming up?

4 A. I can make -- after I spoke to my mother
5 on the phone as well as the physician --

6 MR. WARMBOLD: There is no question posed
7 before the witness.

8 THE COURT: Objection sustained. Next
9 question.

10 BY MR. WARMBOLD:

11 Q. Did your friend Sarah stay with you the
12 entire time you were in Arizona?

13 A. Yes.

14 Q. Is Sarah the individual who drove you
15 back to Illinois?

16 A. Yes.

17 Q. You said you arrived back in Illinois on
18 April 17th?

19 A. I didn't arrive back in Illinois. We
20 left Arizona on the 17th.

21 Q. When did you arrive back in Illinois,
22 what date?

23 A. It was sometime on the 18th.

24 Q. Do you know if it was the morning or the



1 evening?

2 A. It was later -- I wasn't really keeping
3 track of time. I was so exhausted from this whole
4 ordeal.

5 Q. When you were staying in Arizona where
6 did you stay overnight for those approximate two
7 weeks --

8 A. My parents' house.

9 Q. -- that you were out there?

10 A. My parents' house.

11 Q. Was there any other family that was with
12 you when you were out there in Arizona?

13 A. My mother.

14 Q. Do you have any other family out there?

15 A. Not that we consider family.

16 Q. So would it be fair to say that the
17 people who could verify whether you were there in
18 terms of your family would be your father who was in
19 the hospital, your mother and then your friend
20 Sarah?

21 A. Could you repeat that?

22 Q. The people who could verify whether you
23 were in Arizona during that time period would be
24 your mother, your friend Sarah or your father.

1 That's it, correct?

2 A. Absolutely, yes.

3 Q. Where is Sarah today?

4 A. I have no idea where she is right now.

5 Q. When did you become aware that you had
6 to show proof to the Court as to your whereabouts on
7 April 15, 2019?

8 A. A couple days ago, I guess. The fact
9 that I have to show proof that my father had
10 neurosurgery given my experience is easily verified
11 by contacting the doctor and speak -- this is a
12 medical document. That's a legal document. That's
13 easily verified at Mayo. My father is still a
14 patient there. To think that I would have to come
15 and actually justify that my father nearly died for
16 goodness sake.

17 MR. O'KELLEY: Elle, I have to ask you to
18 answer only the question that's asked of you.

19 BY MR. WARMBOLD:

20 Q. Ms. McDonald, you were previously shown
21 what was marked as Exhibit 1. This is the
22 photograph that your attorney had showed you
23 earlier. Who took this photograph?

24 A. To the best of my knowledge my mother



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1 did.

2 Q. What do you base that on?

3 A. My conversation with her. She sent it
4 to my e-mail and said, "Did you get the photo?"

5 Q. Did you do anything else in Arizona
6 outside of visiting your father during the two weeks
7 you were there?

8 A. Can you give me context?

9 Q. I'm asking if you did anything outside
10 of visiting your father while you were in Arizona?

11 A. My prime reason was to visit my father
12 and to help my mother get things -- help my mother.

13 Q. Did Sarah stay with you at your family's
14 home in Arizona?

15 A. Yes.

16 Q. What vehicle did you drive out to
17 Arizona and what kind of vehicle was it?

18 A. She has. It's like a Crosstrail or --
19 it's like a wagon. It's like a station wagon
20 Crosstrail Subaru. I don't know what kind of car
21 her car is. It's not the type of cars I've driven,
22 but it's the car she had for awhile.

23 Q. What color is it?

24 A. It's like a deep khaki green.

1 Q. That's her car?

2 A. Yes, to the best of my knowledge. They
3 have several vehicles.

4 Q. Who is they?

5 A. Her, her brother, her sister, her
6 sister-in-law.

7 Q. They all live together in Paris,
8 Illinois?

9 A. Yes, they do. They live within one
10 house almost right next to the other. They have a
11 very large property, and the homes are all on large
12 property. Sarah has access to other vehicles if
13 need be.

14 Q. I would like to ask you a couple
15 questions about this screen grab or screen shot that
16 you had testified about a little earlier to.

17 You had stated that this is
18 communication that you sent a Dr. Bendok?

19 A. Correct.

20 Q. And this says you sent it on April 5,
21 2019 at 7:42 p.m. correct?

22 A. Correct.

23 Q. You indicate in here that you were going
24 to be flying down to assist your mom. Are you

1 referring to your mom?

2 A. That's what it says.

3 Q. When you say "mom," I want to clarify.

4 That's who you are referring to?

5 A. My mom, yes.

6 Q. Your mother?

7 A. It's the same thing.

8 Q. Again, I just want to make sure I
9 understand. You said you were flying down but you
10 didn't fly, correct?

11 A. Correct.

12 Q. When did you first find out that there
13 were no flights going out to Arizona?

14 A. Right after I was writing that message
15 to Dr. Bendok when I started looking for flights.

16 Q. So shortly after that is when you found
17 out there were no flights?

18 A. That's correct.

19 Q. About how long did it take you in time
20 in order to get there? I know you approximated it,
21 but could you --

22 A. At least a day.

23 THE COURT: Ma'am, please wait for the end of
24 his question because the court reporter has to take

1 down both the question and answer.

2 Could the Court Reporter read back the
3 question.

4 (WHEREUPON, the record was read by the
5 reporter as requested.)

6 BY THE WITNESS:

7 A. It was 24 hours. We left when it was
8 wee hours of the morning, and we got there sun up
9 the next morning, so I would say 24 hours, 25 hours,
10 26 hours. I was exhausted.

11 BY MR. WARMBOLD:

12 Q. Do you recall if you guys had to stop to
13 get gas or refuel the vehicle you were driving?

14 A. Yes. We had to stop and get gas and use
15 the restroom.

16 Q. How many times do you recall stopping on
17 your way out to Arizona?

18 A. Five or six times at least.

19 Q. Any of those times did you stop for
20 food?

21 A. When we went into the stop I pick up my
22 protein bars that I eat at the Petrol Shop.

23 Q. How do you pay for those protein bars?

24 A. What do you mean how do you pay for

1 them?

2 Q. How did you pay for them when you
3 stopped at the Petrol Shop?

4 A. I gave the guy money.

5 Q. Did you pay using a credit card, a debit
6 card?

7 A. No, no. I'm a cash person.

8 Q. I understand. Did you take any
9 photographs with your friend Sarah or your mother or
10 your father while you were out in Arizona for two
11 weeks?

12 A. No, sir. This wasn't a holiday.

13 Q. I would like to move on now, ma'am, to
14 the issue of this laptop and cell phone.

15 You indicated when your attorney had
16 asked you whether you had possession of that laptop
17 or not, you said yes.

18 What about the capability to access that
19 laptop. You indicated it was a business laptop.
20 You used it too?

21 A. Yes.

22 Q. How often did you use it?

23 A. Every day.

24 Q. When was the last time you used it?

1 A. It would have been January, 2017. I had
2 to get other people to -- there were things on
3 there, projects we were working on that I needed to
4 make sure that -- because they said we still need
5 those files and stuff so -- but the last time I
6 personally used it would have been January, 2017.
7 Like I said, after that last computer break-in, I
8 became very displeased to put it politely.

9 Q. Since you conducted business on this
10 laptop, did you have it password protected so others
11 couldn't get into it if they were to obtain that
12 laptop?

13 A. It had many things on there initially
14 before it had been -- before it had been breached
15 and violated.

16 Q. What I'm asking you -- if that question
17 is confusing, I'm just asking did you need a
18 password in order to log in or be able to use the
19 laptop?

20 A. No, because we left it open many times
21 unless -- like I said, it was episodic. If we were
22 traveling, we left it open. If we weren't, then it
23 was closed. So if it was closed and it needed to be
24 re-opened, yes, then it was password protected, but

1 otherwise, no, even some of the files were password
2 protected, but, like I said, once it had been
3 violated and it was suggested --

4 MR. WARMBOLD: Objection, your Honor. There
5 is no question -- the question I posed to the
6 witness has been answered.

7 THE COURT: Sustained.

8 BY MR. WARMBOLD:

9 Q. With respect to the iPhone, ma'am, there
10 was some questioning with respect to when you last
11 saw this iPhone, and you testified that the last
12 time you saw it it was in a back room in Paris,
13 Illinois, correct?

14 A. Correct.

15 Q. Is that back room -- is that the back
16 room located at your parents' residence in Paris,
17 Illinois or some other residence?

18 A. Well, my parents once upon a time they
19 -- they're part owners of the property, but, yes,
20 that's at that time, but that's where -- they
21 weren't living there, but yes.

22 Q. Who was living there?

23 A. John and I were staying there. There
24 was nobody really living there. The only reason we



1 were staying there was because of proximity to have
2 to come to court because that wasn't considered our
3 residence nor was it considered my parents'
4 residence.

5 Q. Well, from a legal perspective, who
6 owned that home? Did you or your parents or someone
7 else?

8 A. At the time we were in the process of
9 transferring ownership to me; however, we backed off
10 of that after we learned of some of the other
11 activities and things that were going on, and so in
12 order to protect our assets even further, we decided
13 not to -- to allow the home to remain in my father's
14 name because I mean --

15 Q. So your father owned it then?

16 A. Correct. Is she okay?

17 MR. O'KELLEY: Answer the questions.

18 THE WITNESS: I was worried maybe something
19 was wrong with her.

20 MS. GOSSELIN: I'm very healthy. Thank you.

21 BY MR. WARMBOLD:

22 Q. You presented yourself at our law office
23 and were deposed a little while back. It was some
24 time last year or the year prior, and you were



1 questioned with respect to the whereabouts of the
2 cell phone, correct?

3 A. I was.

4 Q. Isn't it true that you testified at that
5 deposition that it was in -- the cell phone
6 specifically was in one of the boxes in Paris,
7 Illinois?

8 A. I said I thought it might be in one of
9 the boxes, correct or totes, correct, yes, I did.

10 Q. What did you base that on?

11 A. Because when I put it back in that room
12 there were boxes back there just that -- to go
13 through things about what to keep, what's to go,
14 what to keep, and I thought naturally the phone
15 would have been put in one of those boxes.

16 Q. You have been Court Ordered for some
17 time to turn over this cell phone, correct?

18 A. No, not to my knowledge.

19 Q. When did you first become aware that you
20 had to hand over the cell phone?

21 A. April, maybe May. I'm not sure. I have
22 to tell you between December and probably April,
23 May, things became -- it was just --

24 Q. When you are --

1 A. -- too much of a blur.

2 Q. When you're saying April, May, are you
3 referring to May in regards to right now?

4 A. No, 2017, 2018, 2017, 2018. Actually to
5 be honest even there are times now where it's just
6 things become just so overwhelming that it's just
7 all you can do is just go to bed. I mean, this
8 entire situation has been, I mean, egregious,
9 hideous.

10 Q. Ma'am, all I'm asking you is -- let's
11 put it in terms of months, if that's easier.

12 How many months have you known that the
13 cell phone and laptop were two items you were
14 supposed to produce?

15 MR. O'KELLEY: Objection, calls for
16 speculation. She testified she doesn't recall the
17 days at the time.

18 THE COURT: Overruled. You may answer.

19 BY THE WITNESS:

20 A. I don't remember.

21 BY MR. WARBOLD:

22 Q. When did you first start looking for the
23 laptop or the iPhone?

24 A. I don't remember the exact date.



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1 Q. Your memory is totally exhausted? You
2 have no idea?

3 A. My memory isn't totally exhausted to use
4 your characterization, but I can tell you there are
5 certain things that are triggers for me, deeply
6 emotional triggers, and there are some things
7 that -- there are days you just have to put it aside
8 because it's enough to make you want to throw
9 yourself off of a bridge.

10 MR. WARBOLD: I don't have anything further,
11 your Honor.

12 THE COURT: Re-direct.

13 MR. O'KELLEY: I have no re-direct, your
14 Honor.

15 THE COURT: Okay. Let's take a break, and
16 then we'll go into the Citation, I guess, for the
17 other items.

18 (WHEREUPON, a recess was had.)

19 THE COURT: Okay. So are we ready to go on
20 the Citation, your Honor?

21 MS. GOSSELIN: Yes, your Honor.

22 THE COURT: I assume we're re-calling --
23 you're re-calling Ms. McDonald.

24 MS. GOSSELIN: Yes, sir.



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1 THE COURT: Ms. McDonald, if you will resume
2 the witness stand. You are still under oath.

3 On this one, I think it's your burden.

4 MS. GOSSELIN: Yes, your Honor.

5 THE COURT: So you may proceed. Go ahead.

6 MS. GOSSELIN: Thank you.

7 DIRECT EXAMINATION

8 BY MS. GOSSELIN:

9 Q. Ms. McDonald, do you recall going to a
10 gathering at Shawn McDonald's house on Mother's Day
11 of 2017?

12 A. I wouldn't call it a gathering, but yes.

13 Q. You were present at that time?

14 A. I was.

15 Q. Now, are you aware that John had been
16 storing some of his personal items at Shawn's house?

17 A. I'm aware of that Shawn was storing
18 John's items against John's will at Shawn's house.

19 Q. But you agree that certain of John's
20 property was located at Shawn's house; is that
21 correct?

22 A. Of course. That's why we wanted it back
23 that day.

24 Q. So on that day is it correct that John



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1 removed a number of items from the house?

2 A. He absolutely did not. Shawn wouldn't
3 allow him to.

4 Q. So nothing was removed from the house on
5 Mother's Day?

6 A. We left there and went straight to the
7 police station.

8 Q. So nothing at all was removed?

9 MR. O'KELLEY: Objection, asked and answered.

10 THE COURT: Sustained.

11 BY MS. GOSSELIN:

12 Q. Are you aware that John stored various
13 items of personal property at his parents' house?

14 A. Once again, I'm aware, yes, to answer
15 your question.

16 Q. Now, on May 30 of 2017, the day that
17 John was placed -- Shawn was named as guardian, were
18 you present at John's parents' house?

19 A. No, we were not.

20 Q. You were not present?

21 A. No, we were not.

22 Q. Are you aware of John having ever
23 removed any items of personal property of his own
24 from his parents' house?

1 A. He tried.

2 Q. As far as you're aware, was any property
3 removed from his parents' house?

4 A. Early April John took a small suitcase
5 that had some shorts and T-shirts in it, and he was
6 asking where his other belongings were.

7 Q. Other than that, are you aware of any
8 items of personal property that John removed from
9 his parents' house?

10 A. He took some shirts that were in his --
11 I don't know if it's a three-drawer chest or four-
12 door chest that were in the room -- pardon me -- off
13 the guest room. He had shirts, shorts. He had his
14 tennis shoes. He had -- there was some suits and
15 some dress shirts.

16 Q. How about a kilt? Was there a kilt
17 among the items that he took?

18 A. I later found out that he had his kilt
19 with him, yes.

20 Q. How about a jacket that goes with the
21 kilt?

22 A. Yes.

23 Q. And a sporran, the little furry purse?

24 A. I know what it is.

1 Q. Was that also part of it?

2 A. I believe so.

3 Q. How about some Ghillie shoes to complete
4 the outfit?

5 A. No, he didn't have those. I would have
6 known that.

7 Q. So other than his clothing, there --
8 that's all you're aware of?

9 A. Correct. He wanted to know where his
10 things had been taken, and his father told him Shawn
11 came and took them.

12 MS. GOSSELIN: Objection, your Honor, hearsay.

13 BY THE WITNESS:

14 A. I was there. I heard it.

15 THE COURT: Sustained.

16 BY MS. GOSSELIN:

17 Q. So did you ever see the bongo drum set
18 that belonged to John?

19 A. John had so many musical instruments
20 over the course of the 35 years. I've seen bongos.
21 I've seen many drum sets.

22 Q. Were the bongos ever -- have you seen
23 bongos in the last two years?

24 A. In the last two years?



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1 Q. Yes.

2 A. I believe so, yes, I think so. I think
3 -- I can't remember where, but I think I have, yes.

4 Q. And were the bongos part of the --

5 A. Actually can I -- I remember.

6 Q. Were the bongos part of the belongings
7 that John took with him?

8 A. No. Actually I remember now. The
9 bongos were part of the big Jerry Springer Klapuffel
10 -- and that's how I characterize it with all due
11 respect -- at Shawn's house when Shawn wasn't
12 allowing John to take his things out of the house,
13 and Shawn would not allow John to take anything. He
14 said, "You're not taking those."

15 I remember John trying to carry a drum,
16 and that's when John told me, "Elle, go move your
17 car to the road."

18 MS. GOSSELIN: Your Honor, I move that that be
19 stricken as nonresponsive to the question.

20 MR. O'KELLEY: Your Honor, she was responding
21 to the question, and this is a Citation proceeding
22 with relaxed evidentiary standards. I do feel it's
23 appropriate given the line of questioning that
24 counsel has chosen to take.



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1 THE COURT: Overruled.

2 BY MS. GOSSELIN:

3 Q. At this point in time do you have -- do
4 you know where John's clothing is?

5 A. Well, there's all of our clothing and
6 things that have been in storage that we haven't
7 been able to get to for three years now, not to
8 mention the clothing that along with my stuff
9 that --

10 Q. Do you currently have in your possession
11 or under your control any of John's possessions?

12 A. No. What do you mean "possessions"?

13 Q. His clothing, his kilt.

14 A. You have to understand something. John
15 and I, what was mine is his and what is his is mine.
16 That's been the way it's been for lots of things for
17 over 35 years.

18 Q. The question is: do you have in your
19 possession or under your control any of his
20 clothing, including, but not limited to the kilt?

21 A. I don't have his kilt, no.

22 Q. Do you have his Scottish jacket?

23 A. No.

24 Q. Do you have his sporran?



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1 A. No.

2 Q. Do you know where they are?

3 A. No.

4 Q. You just testified that you had picked
5 -- that he had taken those items with him?

6 A. Correct, that's correct. I did testify
7 to that, but I do not know where they are. John
8 moved all that stuff because he did not want Shawn
9 stealing it after we knew that -- by the police that
10 there was an attempt to kidnap John. John was
11 petrified that Shawn would break into the house and
12 steal more of his stuff.

13 So when I was up here -- during the time
14 that I was up here, by the time I had gotten home,
15 John had all of our things removed from the house,
16 including my stuff. Most of our stuff was already
17 packed up to be moved anyway because we weren't
18 going to be returning there in December at all, but
19 when I walked in the house I actually thought
20 something had happened because even my things were
21 gone. He left me -- I shouldn't laugh -- but he
22 left me two suits and my jeans and things, and --
23 because he figured I would know that he had moved
24 the stuff to protect it from Shawn further stealing

1 more of our stuff.

2 Q. When did he pack up everything?

3 A. It was that -- the end of November when
4 I was having -- when I had to come up here for that
5 initial fraudulent Order of Protection that Shawn
6 had filed.

7 Q. He packed up your things too?

8 A. Most of our stuff was already packed
9 because, like I said, we weren't even going to be
10 going back there. We weren't intending to stay
11 there, but, yes, what little items were left, like
12 even some of my makeup and stuff, he went ahead and
13 he removed it from the house because he wanted to be
14 assured that when we were gone over the Christmas
15 holidays too that nobody would come into the house
16 and take the stuff because he said, as it was, we
17 had to replace so many things that we just didn't
18 want to be put in that position again.

19 Q. So do you know where he sent them?

20 A. No, I don't.

21 Q. Have you gotten any bills for storage?

22 A. No, I don't.

23 Q. Have you ever asked anyone about where
24 they might be?



1 A. Beyond asked.

2 Q. Who have you asked?

3 A. Called practically every storage
4 facility within 70 miles of us, asked friends if
5 John asked them to keep things.

6 Q. Which friends of John's have you asked?

7 A. Pat Rummerfield, Ray.

8 Q. Ray who?

9 A. Bament. Of course, the first person I
10 asked was Diane. "Does John have all of our stuff
11 out there." And she said, "No."

12 Q. Who is Diane?

13 A. She is our close -- she is like
14 considered family to us.

15 Q. What is her last name?

16 A. Boyer.

17 Q. And that's the woman John was staying
18 with when he died, correct?

19 A. You mean when he was killed?

20 Q. When he died. I don't know the
21 circumstances. When he died it was at her house; is
22 that correct?

23 A. Yes. He was -- she has a guest home.
24 He was inside her house at the time, yes.

1 Q. Who else did you ask?

2 A. I'm sorry?

3 Q. Who else did you ask about where these
4 items would be?

5 A. Like I said, I called -- once it was
6 determined that Ray didn't have -- he didn't ask Ray
7 to keep them or Pat to keep them or anybody that
8 they knew, I called storage facilities asking, do
9 you have a storage facility in this name.

10 Q. And can you give me the name of a couple
11 of the storage facilities?

12 A. I just typed storage facility, just -- I
13 just went down the list on the computer.

14 Q. I'm asking you, can you tell me the name
15 of one of the storage facilities?

16 A. Like I said, when I typed within the 70
17 -- all the storage units I called in Champaign to
18 Charleston, Illinois, Mattoon, Chrisman. I don't
19 use storage facilities in that area so I don't know
20 their exact names. They could have been U-Haul.
21 They could have been some other random names of
22 whatever these storage places are called.

23 Q. And how many of them would you say you
24 called?

1 A. I would be speculating. I don't know.

2 Q. Five?

3 A. More than five.

4 Q. More than ten?

5 A. Definitely.

6 Q. More than 20?

7 A. Probably.

8 Q. More than --

9 A. It wasn't all in one day. It was --
10 because it wasn't just -- it was our life. Like it
11 wasn't just clothes. It's like things that we had
12 gotten while we were there and stuff as well and my
13 clothes as well. It's just --

14 Q. And --

15 A. The whole reason --

16 Q. Let me back up. You said that he packed
17 everything up when you were separated during the
18 Order of Protection?

19 A. We weren't separated. We weren't
20 allowed to be together because of this.

21 Q. Because of the Order of Protection?

22 A. Right.

23 Q. And that Order of Protection was
24 terminated on December 8; is that correct?

1 A. Yes.

2 Q. And you never asked John --

3 A. Absolutely.

4 Q. What did John tell you?

5 A. So Saturday morning I got up. I said,

6 "By the way, John, where is all of our things?"

7 And he goes, "Elle, don't worry about
8 it."

9 Do you want me to paraphrase? I don't
10 know if I should say what he said.

11 Q. You did ask him?

12 A. Yes.

13 Q. Did he tell you where they were?

14 A. He said he would.

15 Q. And he had your things that were gone
16 too, correct?

17 A. They weren't gone. It's not like he was
18 absconding with them. He was just securing them
19 somewhere. I had no reason to fear.

20 Q. So between the Order of Protection
21 terminating on December 8 and his death, he never
22 told you where all of this was being stored; is that
23 correct?

24 MR. O'KELLEY: Can we take a brief break?



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1 THE COURT: Yes.

2 MR. O'KELLEY: Five minutes.

3 THE COURT: Yes. Let's take five minutes.

4 (WHEREUPON, a recess was had.)

5 THE COURT: Can we have the last question read
6 back.

7 (WHEREUPON, the record was read by the
8 reporter as requested.)

9 BY THE WITNESS:

10 A. Yes.

11 BY MS. GOSSELIN:

12 Q. Now, after his death he was cremated,
13 correct?

14 A. Yes.

15 Q. And where are his ashes now?

16 A. They were spread per his wishes.

17 Q. Where were they spread?

18 A. Lake Michigan.

19 Q. Who spread them?

20 A. I did.

21 Q. Who was present at the time?

22 A. I was.

23 Q. And anyone else present?

24 A. No.



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1 Q. And when did he tell you that this is
2 what he wanted done?

3 A. John and I had talked about these types
4 of things since we were in college. I mean, it was
5 either that or to be shot through the Psychlotron.

6 Q. And did you ever inform any of his
7 family members of your intention to dispose of the
8 ashes?

9 A. I, again, followed John's wishes about
10 everything that we had ever talked about over the
11 years.

12 Q. The question is: did you ever tell
13 John's family about your disposal of the ashes?

14 A. No.

15 Q. Now, in your earlier testimony you said
16 John was killed. Why did you say that?

17 MR. O'KELLEY: Your Honor, I'm going to object
18 on the basis of relevance. This is a Citation for
19 personal property, not the circumstances surrounding
20 the decedent's death.

21 THE COURT: Sustained.

22 MS. GOSSELIN: I have no further questions.

23 THE COURT: Any cross?

24 MR. O'KELLEY: Some brief follow-up, your

1 Honor, if that's okay.

2 THE COURT: Follow-up. Okay. Cross.

3 MR. O'KELLEY: However you want to
4 characterize it.

5 THE COURT: Sure. Go ahead.

6 CROSS-EXAMINATION

7 BY MR. O'KELLEY:

8 Q. Elle, you testified that you didn't tell
9 John's family about spreading John's ashes. Can you
10 tell me why that was?

11 A. John wanted absolutely -- there were two
12 people that John felt closest to, Mike and his
13 mother, and he had concerns for his sister, of
14 course, and nieces and nephews, but I mean in the
15 immediate. He absolutely for quite some time had
16 made it -- I don't want to be rude, but vehemently
17 clear that he wanted absolutely nothing to do with
18 Brett or Shawn ever, and that had gone on for quite
19 some time actually.

20 Q. To be clear, Brett and Shawn are his
21 brothers?

22 A. Yes.

23 Q. I want to be as clear as possible.

24 A. He said to me --

1 THE COURT: One at a time.

2 BY MR. O'KELLEY:

3 Q. I'm going to ask you some follow-up.

4 As you sit here, I want to be clear, do
5 you know where John's kilt is?

6 A. No.

7 Q. Do you have access to John's kilt?

8 A. No.

9 Q. If you were ordered to produce John's
10 kilt, could you do it?

11 A. No.

12 Q. As you sit here do you know where John's
13 Scottish highland wear is?

14 A. No.

15 Q. Do you have access to John's Scottish
16 highland wear?

17 A. No.

18 Q. If you were ordered to produce it, could
19 you do that?

20 A. No.

21 Q. As you sit here do you have access to
22 John's clothing?

23 A. No.

24 Q. If you were ordered to produce it, could



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1 you do that?

2 A. No.

3 Q. As you sit here do you have access to
4 any heirloom family photographs?

5 A. There were never -- nobody ever saw any
6 -- in 30 years nobody ever saw any heirloom photos
7 of John because if he had had an heirloom photo, it
8 would have been in his office in St. Louis, in his
9 office at Kennedy. There were no heirloom photos.

10 Q. As you sit here today you have no
11 knowledge of even the existence of any heirloom
12 photographs?

13 A. Never, ever.

14 Q. As you sit here today do you have any
15 other personal effects that belong to John?

16 A. No.

17 Q. Do you have access to any other personal
18 effects belonging to John?

19 A. No.

20 Q. If you were ordered to produce personal
21 effects belonging to John, would you do so?

22 A. No.

23 Q. If you were ordered to produce heirloom
24 family photographs, could you do so?



1 A. There are no heirloom family
2 photographs.

3 Q. So is that no?

4 A. No.

5 Q. If you were ordered to produce John's
6 remains even assuming they were assets of the
7 estate, could you do so?

8 A. No.

9 MR. O'KELLEY: I have nothing further, your
10 Honor.

11 THE COURT: Any re-direct?

12 MS. GOSSELIN: Just one.

13 RE-DIRECT EXAMINATION

14 BY MS. GOSSELIN:

15 Q. Who is Mike?

16 A. Well, the -- he's the cousin, but he is
17 like a half brother.

18 Q. Of whom?

19 A. It's Betty's son. Mike is related to
20 John.

21 Q. How is he related to John?

22 A. Can I get into all of that?

23 MR. O'KELLEY: She asked. You need to answer
24 the question.



1 BY THE WITNESS:

2 A. He's -- John considered him a half
3 brother.

4 BY MS. GOSSELIN:

5 Q. Is that through his mother or his
6 father?

7 A. Through his mother.

8 MS. GOSSELIN: No further questions.

9 THE COURT: Okay. You may step down. Any
10 other witnesses on the Citation?

11 MS. GOSSELIN: No, your Honor.

12 THE COURT: Then I'll hear a brief summary by
13 each side on the Rule, first, I guess, the
14 Petitioner on the Rule or it doesn't matter to me
15 who goes first. Since we went first in order of
16 proofs, then Respondent can go first.

17 MR. O'KELLEY: Sure, your Honor. I will be
18 brief.

19 THE COURT: Mr. O'Kelley.

20 MR. O'KELLEY: Thank you, your Honor. We were
21 here on a Rule to Show Cause, and our burden
22 effectively with the Rule having issue was to
23 provide evidence to establish the following, that
24 Elle's father was hospitalized at that April 15th

1 court appearance that she was supposed to be present
2 at and that Elle was in Arizona at the time and
3 couldn't leave, and then as to the underlying Order
4 that was the subject of the Rule basically providing
5 cause for purported non-compliance with the Court's
6 Order to provide a laptop and a cell phone.

7 The testimony and documents elicited
8 established that Elle's father was, in fact,
9 hospitalized during the relevant time period in a
10 dire condition, that it was Elle's understanding
11 that her father was in a dire condition and needed
12 to go to the hospital. She testified at length
13 about the circumstances surrounding that, that she
14 understood it was important for her to be here but
15 simply could not be here, and nothing has been
16 undercut in terms of any of the cross examination
17 provided by counsel as to that testimony. I would
18 posit that that burden has been satisfied.

19 As for the computer, that computer has
20 been produced, and I don't think counsel would deny
21 that. As for the phone, she has testified at length
22 where she last thought she had it, that she did, in
23 fact, believe she had it, but when she searched for
24 it, she could not locate it and cannot produce it in

1 accordance with this Court's Order.

2 If that changes for any reason, I will
3 gladly produce the phone, but under the
4 circumstances it's not possible, as she testified,
5 for her to comply with the Order directing her to
6 produce the phone, and if she were held in contempt
7 for failure to do so, there would be no ability for
8 her to purge that contempt, and certainly nothing in
9 here that suggests willful disobedience. So for
10 that reason I think she satisfied the Rule.

11 THE COURT: Okay. Petitioner.

12 MR. WARMBOLD: Thank you, Judge, with respect
13 to the Rule to Show Cause there is a number of
14 things at issue.

15 With respect to whether Ellizzette has
16 provided substantial proof or sufficient proof as to
17 her absence on April 15, 2019 which was required
18 pursuant to a Court Order, there is -- the record is
19 deficient in terms of proof that she has been able
20 to submit to the Court.

21 Her entire testimony is self-serving,
22 and in order for this Court to find she has provided
23 proof, your Honor would have to believe what she has
24 to say, and, quite frankly, your Honor, the

1 testimony that was elicited today before all of us
2 was entirely incredible.

3 The most simple question that I would
4 propose would constantly be responded to with a
5 never-ending narrative. I would have to clarify
6 with the witness a number of times to get a straight
7 answer out of her.

8 One thing that doesn't add up is the
9 timeline, your Honor. That does not add up, and I
10 made it crystal clear the question I was asking. It
11 was elicited a number of times. The question I'm
12 referring to is, "When did you leave?"

13 She answered that she left sometime
14 after midnight. So I clarified, and I'm sure your
15 Honor remembers, "So does that mean that you left
16 the morning of April 6th?"

17 And she clearly said, "No. I left on
18 April 5th, shortly after midnight on April 5, and I
19 arrived in Arizona sometime when the sun was coming
20 up on April 6th."

21 Fair enough. How could you reconcile
22 that with Plaintiff's Exhibit 2 -- or Ms. McDonald's
23 Exhibit 3 rather which is purported to be some
24 communication she sent to some individual by the

1 name of Dr. Bendok that she sent on April 5, 2019 at
2 7:42 p.m. where she tells this individual that she
3 is going to be flying down to assist her mother.
4 That does not make any sense.

5 She said -- and she testified she did
6 not decide to drive down or it did not come about
7 that she would be driving down to Arizona until some
8 time after this happened because she found out there
9 weren't any flights available to her at that date
10 and time. That's when she decided to drive down to
11 Arizona. That -- you can't have it both ways.

12 You can't say you left shortly after
13 midnight on April 5th when you send this message on
14 the evening of April 5th at 7:42 p.m. saying that
15 you're going to be catching a flight, but then
16 shortly thereafter you changed to driving, and then
17 somehow you arrive across the country close to the
18 West Coast when the sun is arising on April 6th.

19 That does not add up. That does not
20 make sense, and I submit to the Court that that was
21 not true. The sequence of events presented create a
22 factual impossibility.

23 Further, who is Sarah Obannon and why
24 isn't she here before the Court to testify and



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1 provide additional testimony that could back up and
2 verify the testimony that Ms. McDonald provided?
3 Who knows if Sarah Obannon even exists. She is not
4 here. We had no opportunity to ask her any of the
5 questions that could potentially verify the
6 assertions that Ms. McDonald made.

7 Additionally, in terms of other
8 self-serving statements, every transaction she said
9 she made on the way to Arizona from Illinois was
10 made in cash. I gave her ample opportunities to
11 find some way we could maybe prove that she was in
12 transit from Illinois to Arizona between April 5th
13 or April 6th, 2019, and there just isn't any.

14 She didn't fly. We don't have any
15 flight itinerary. We also don't even have an
16 affidavit from anyone, Judge. She was there for two
17 weeks. One would think that it would be possible to
18 reach out to some of the medical personnel in
19 Arizona and kindly ask them for a three-sentence
20 affidavit just saying, "Elle McDonald was here on
21 this date and time." We wouldn't even be having
22 that issue if that was presented to the Court. We
23 don't have that.

24 Pivoting to the issue of the laptop and



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1 the iPhone, Judge, yes, the laptop was eventually
2 provided. I'm not arguing it wasn't provided, but
3 the Court Order on January 29, 2019 says that it was
4 to be provided within 14 days. That Order was not
5 complied with. These are Court Orders. They're not
6 suggestions.

7 Everything that Ms. McDonald has done up
8 until this point would lead one to believe that
9 these are just suggestions that your Honor is
10 proposing to her. When she said it's ridiculous to
11 turn over a computer that belongs to a company, that
12 just surmises everything in terms of Ms. McDonald's
13 attitude for what your Honor says in the Orders that
14 are entered in this courtroom.

15 Maybe they're just ridiculous, and they
16 don't have to be complied with. It's wrong, and
17 it's just been -- it's been par for the course up
18 until this point. We've had issues with obtaining
19 fingerprints. We've had issues obtaining simple
20 things such as laptops that were clearly within her
21 possession. If she were able to turn it over to our
22 office recently, one would believe that it was
23 possible to be achieved within 14 days of January
24 29, 2019.



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1 Judge, she has directly disobeyed Court
2 Orders, and we ask that you enter an Order to that
3 effect reflecting the fact that she has disobeyed
4 Court Orders.

5 THE COURT: Any reply?

6 MR. O'KELLEY: Briefly, your Honor. I'm not
7 going to get into parsing the exact time that Elle
8 left. I don't think that's particularly important
9 given that the Court date was April 15th which is
10 obviously several days after the departure, be it on
11 the 5th or the 6th.

12 All I will say is in response to
13 counsel's suggestion that Ms. McDonald is treating
14 these as suggestions, these Court's Orders, she has
15 been here repeatedly. She is here today testifying
16 about her deceased spouse at length. Your Court's
17 Order directed that she was to provide that
18 testimony today and prove the hospitalization in
19 Arizona. She has done so, your Honor, and complied
20 with this Court's Order.

21 And as to the fingerprints, we discussed
22 this, your Honor. This will be the third time she
23 has complied with that Order so I object to
24 counsel's characterization. We are here today



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1 because of this Court's Order and seeking to comply
2 with what this Court wants of us, and that includes
3 Ms. McDonald who testified at length today. I think
4 she satisfied her burden.

5 MR. WARMBOLD: If I may very briefly, Judge,
6 just for purposes of the record, I would like the
7 record to reflect that as we sit here right now
8 Ms. McDonald is not here. She left the courtroom a
9 few minutes ago. She hasn't returned. I hope she
10 is still within the building, but as we sit here
11 right now she is not here.

12 THE COURT: I see that, but I assume she's
13 stepped out into the hall and will be back.

14 At any rate, as to what we heard this
15 afternoon on the -- if somebody can provide me with
16 the Rule or the Petition for a Rule or both, a copy.

17 MR. O'KELLEY: I can. It may take a moment.

18 MS. GOSSELIN: Here is the Rule. That's based
19 on the violation of this Order.

20 THE COURT: On April 15th we had scheduled for
21 hearing the Rule and counsels at the time for
22 Ms. McDonald were re-entering the case and at that
23 time asked for a continuance based on their client
24 being out of state.



1 I'm not sure I've had the greatest
2 convincing evidence of her being out of state in
3 Arizona, and I also would like to have those
4 exhibits that were admitted today handed up, if we
5 can, and we will put those in the record, Exhibits
6 1, 2 and 3.

7 MR. O'KELLEY: It's Exhibits 1 and 3.

8 THE COURT: 1 and 3. I'm sorry.

9 MS. GOSSELIN: I don't know if the Court would
10 like this. This is the Order that was entered on
11 the 19th along with the Rule to Show Cause, and
12 Ms. McDonald was made aware of the necessity of her
13 appearance at that time.

14 THE COURT: This Order that you just handed me
15 was an Order dated -- entered on March 19, 2019.

16 MS. GOSSELIN: Yes, your Honor. If you will
17 recall, I grabbed the wrong form, and I actually on
18 that date entered a Body Writ, and so I had to come
19 back and enter the actual Rule, if you'll recall
20 that, because it was rather embarrassing for me.

21 THE COURT: Okay. I got you. So this is in
22 connection with the Rule issue?

23 MS. GOSSELIN: Correct.

24 THE COURT: All right. Well, on the

1 continuance to today to provide proofs that she was
2 in Arizona, while that is -- those proofs are
3 somewhat lacking, I think it goes to the good cause
4 under Supreme Court Rule 183 to -- and those were
5 the terms I imposed -- was bring something to prove
6 that you were in Arizona.

7 I have her testimony in some detail,
8 although that is also lacking and somewhat spotty as
9 to credibility, but as to that I'm not going to hold
10 her in contempt or do anything like that. That was
11 on the -- she had her attorneys here. They asked
12 for a continuance, so there is good cause.

13 As to the Rule itself and her finding --
14 and a finding that she be held in contempt, there is
15 an impossibility as to the iPhone. There is
16 compliance, albeit late, on the laptop, thereby
17 having a laptop turned over late caused the filing
18 of this motion, so to some extent there was a minor
19 contempt, civil contempt, and the sanction on that
20 would be April 15th and March 19th attorney's fees,
21 reasonable attorney's fees for one attorney, and
22 I'll give the Petitioners 21 days to file a
23 petition -- itemized petition as to fees for those
24 days and today.



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1 As to the other -- as to the Citation, I
2 -- if that's all the evidence there is, then there
3 is no motion as to the Citation for turnover of
4 anything, there is nothing I can do at this time
5 unless there is some reason you want to hold that
6 open for other witnesses, but I think that was the
7 hearing on the Citation as well.

8 MS. GOSSELIN: Yes.

9 THE COURT: So that would be discharged.

10 As to any other sanctions on the Rule,
11 those would be denied. Submit the evidence exhibits
12 to the Clerk, and the parties may withdraw those if
13 they wish.

14 MR. O'KELLEY: The exhibits, your Honor?

15 THE COURT: Yes.

16 MR. O'KELLEY: Whatever your Honor prefers.
17 They are the basis of your Honor's ruling. We'll
18 keep them in the record.

19 THE COURT: We'll keep them in the record. I
20 don't know that there will be any appeal, but they
21 will be in the record, and eventually we'll have the
22 parties withdraw them, whoever submitted them.

23 Okay. So if you will give me an Order,
24 and then I know we have another date on this

1 May 15th or at least I have seen notices for
2 May 15th, and we may have other dates.

3 MR. O'KELLEY: Hang on, your Honor. I
4 apologize. The May 15th date may be news to me.
5 What's noticed for May 15th?

6 MS. GOSSELIN: I don't know what's noticed for
7 May 15th.

8 THE COURT: It was Mr. Kinnally's office's
9 motions, I believe.

10 MR. O'KELLEY: I know there was a Citation
11 date for April 15th. I'm not sure -- that was the
12 date that preceded this one, if there was some sort
13 of entry error.

14 (WHEREUPON, discussion was had off the
15 record.)

16 THE COURT: I saw a notice of a motion for
17 May 15th. That's up to you.

18 As far as the fingerprints, that Order,
19 I think, has to stand on the 48 hours, so we'll get
20 those done finally.

21 MR. O'KELLEY: Your Honor, I just want to be
22 clear. Where exactly are you saying this has to be
23 done?

24 MS. GOSSELIN: The jail at booking.

1 MR. O'KELLEY: This is the Cook County --

2 MS. GOSSELIN: No. Kane County.

3 THE COURT: Kane County Sheriff's Office and
4 Jail on Route 38.

5 MR. O'KELLEY: This is the same place as the
6 first time?

7 MS. GOSSELIN: Correct, but she has to go to
8 booking, and Officer Hoffman, I think, is going to
9 be gone by now, but he was going to let the new
10 officer coming on be aware of this situation.

11 MR. O'KELLEY: So she could in theory go there
12 now?

13 MS. GOSSELIN: Right now, yes.

14 MR. O'KELLEY: Okay.

15 THE COURT: She could. Last time we were here
16 the security officer downstairs made a call over for
17 her, if she wishes, to pave the way, and if not, if
18 she does it in the next two days, then she's on her
19 own.

20 MR. O'KELLEY: Understood.

21 MR. WARMBOLD: Your Honor, there is one small
22 little housekeeping issue with respect to the laptop
23 that was turned over. It is password protected.
24 There is a Court Order that was entered with respect

1 to no party is to alter or interfere with any of the
2 electronically stored information that's on either
3 the phone or the laptop.

4 That laptop we're locked out from. We
5 don't have a password to access that laptop. We
6 reached out to see what steps could be taken. There
7 is -- Apple did reach out and indicated specific
8 language if it were entered in a Court Order, they
9 could provide the password or work around the
10 password in order to access the laptop. Otherwise,
11 the laptop itself is just the unit, but whatever is
12 on that piece of electronic equipment, Judge, we
13 don't know, but as it stands right now it's unable
14 to be accessed.

15 THE COURT: What's your motion?

16 MR. WARMBOLD: I would ask that an Order be
17 entered to --

18 MS. GOSSELIN: To comply --

19 MR. WARMBOLD: -- to specifically comply with
20 the terms of the Court Order.

21 MS. GOSSELIN: This is from Apple. This is
22 the response we just received today, and they
23 will --

24 MR. O'KELLEY: Your Honor, I don't want to



1 create paper needlessly. I don't think we know the
2 password necessarily. All I would ask is that maybe
3 this could be a motion raised before the next court
4 date so we have an opportunity to review it.

5 MS. GOSSELIN: This would be something that we
6 could get done now to avoid additional expense. If
7 the Court would like -- this is the statement that
8 Apple -- Shawn spent the day there yesterday trying
9 to get access actually at the Apple Store, and they
10 escalated it through things.

11 This is what Apple is saying they need
12 in order to give access to what's actually in the
13 computer, and all we are seeking to do is find out
14 what's on the computer. We have possession of it
15 but --

16 THE COURT: Is there a prior Order that she
17 give the password?

18 MR. O'KELLEY: No.

19 MS. GOSSELIN: No.

20 THE COURT: She didn't really get asked that
21 question here.

22 MS. GOSSELIN: She was asked that question.
23 She was questioned about the password.

24 MR. WARMBOLD: There was a line of

1 questioning, Judge, with respect to a password in
2 order to access the computer. The response that was
3 given was sometimes there was a password on the
4 computer, sometimes there was not, and then some of
5 the information within the computer was also
6 password protected. There weren't specifics in
7 terms of what information on that computer is
8 password protected.

9 THE COURT: Okay. If you want to resolve this
10 with counsel in the meantime, you may do so,
11 otherwise I think that you would like to probably
12 keep your Citation open in that regard as far as
13 getting a Turnover Order as to that.

14 MR. O'KELLEY: Your Honor, this may be fine.
15 This is the first I heard of it. We may be able --

16 THE COURT: First I heard too. If there's no
17 prior Order, I'm not going to order anything at this
18 moment -- no prior Order that supposedly hasn't been
19 complied with and there is only an oral motion, I
20 think to --

21 MS. GOSSELIN: And we're just trying to get
22 things resolved in as simple a matter as possible.

23 THE COURT: Well, yes, but we're on the
24 record, and it's out of left field a little bit.

1 It's more than just housekeeping.

2 MR. O'KELLEY: We'll talk.

3 THE COURT: All right.

4 MR. O'KELLEY: There are the two matters we
5 originally raised before the Court, so with your
6 Honor's permission, we will enter a briefing
7 schedule on that Motion to Stay, set a hearing date
8 that's agreeable for your Honor.

9 The only other thing -- I know we have
10 been here quite some time, I apologize, your
11 Honor -- I do have a proposed -- in the Court's last
12 Order you indicated -- and I can show you a copy --
13 that we would be adjusting discovery deadlines today
14 from the case management Order that was entered.

15 I have proposed dates which if you gave
16 us a brief leave to discuss them, perhaps we could
17 enter today before we leave. I know it's late
18 though. For instance, I know written discovery per
19 the Order closed yesterday.

20 THE COURT: We're talking scheduling so I
21 think the hearing for the record is over.

22 MR. O'KELLEY: That's correct.

23 THE COURT: We can let the court reporter go.

24 (Hearing concluded at 4:15 p.m.)



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C E R T I F I C A T I O N

I, KIMBERLY A. MURPHY, a Certified Shorthand Reporter of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the hearing aforesaid, and that the foregoing is a true, complete, and correct transcript of the proceedings of said hearing as appears from my stenographic notes so taken and transcribed under my personal direction.

IN WITNESS WHEREOF, I do hereunto set my hand of office at Chicago, Illinois, this 3rd day of May, 2019.



Certified Shorthand Reporter

C.S.R. Certificate No. 84-2586.



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11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

WITNESS	DX	CX	RDX	RCX
ELLIZZETTE MCDONALD				
By Mr. O'Kelley	19			
By Mr. Warmbold		44		
ELLIZZETTE MCDONALD				
By Ms. Gosselin	63		80	
By Mr. O'Kelley		77		

E X H I B I T S

EXHIBIT	MARKED FOR ID	RECEIVED
No. 1	25	27
No. 2	27	
No. 3	29	35



TRANSCRIPT OF PROCEEDINGS
 IN THE MATTER OF THE ESTATE OF JOHN MCDONALD III

May 01, 2019
 Index: 1..80s

	18th	85:1		26:9, 13,
1	49:23	86:13	4	18 44:22
		87:3, 24		47:21
	19	90:15	4/11	60
1	34:19		28:16	5:3
25:14, 17	90:15	21		
27:3, 9, 11		91:22	4/5	6th
51:21	19th		28:15	21:21, 23
90:6, 7, 8	90:11	24	48	22:21, 24
	91:20	55:7, 9	11:6	26:3
10			12:5, 6	44:18
14:13	2	25	93:19	47:23
		55:9	4:15	48:14
100		26	98:24	49:1
34:20	2	55:10	4th	84:16, 20
14	27:20, 24	28th	26:3	85:18
11:16	84:22	33:8		86:13
87:4, 23	90:6	29		88:11
		5:14	5	
15	20	87:3, 24		7
5:23	45:13			
14:13	73:6	29th	5	
20:1, 4, 10		33:8	20:16	70
24:11, 13	2017		21:9, 13	71:4
37:1	57:1, 6		30:8	72:16
45:12	61:4	3	31:1, 4	
51:7	63:11		34:13, 19	744
83:17	64:16	3	53:20	3:1
			84:18	7:42
15th	2018	3	85:1	34:15
25:5	6:21	29:20, 23		53:21
81:24	16:20	31:8	5th	85:2, 14
88:9	39:19	34:21	21:8	
89:20	41:2, 3, 9,	35:20, 23	26:2, 3	8
91:20	14 61:4	36:1	33:1	
93:1, 2, 4,	2019	84:23	44:24	
5, 7, 11, 17	5:14	90:6, 7, 8	48:20	8
	20:1, 10	30	84:18	73:24
16	21:9 22:1	64:16	85:13, 14	74:21
18:3	24:11, 13	79:6	86:12	
	26:9, 14,	35	88:11	8.5
17	18 31:1, 5	66:20		29:3
3:1	34:13	68:17	6	
	37:1	38		
17th	47:21	94:4	6	80s
22:18, 19,	48:16		22:1	46:16
24 36:5	51:7			
49:18, 20	53:21			
183	83:17			
91:4				



800.211.DEPO (3376)
 EsquireSolutions.com

A	Act 18:4	adverse 16:7	93:4 98:10	60:21,22 61:2 65:4
ability 83:7	activities 59:11	affidavit 86:16,20	apparently 7:9,14 8:17	81:24 83:17 84:16,18, 20 85:1,
absconding 74:18	actual 12:22 90:19	afternoon 89:15	appeal 92:20	13,14,18 86:12,13
absence 83:17	add 84:8,9 85:19	afterward 5:4	appearance 11:4 82:1 90:13	88:9 89:20 91:20 93:11
absolutely 24:16 37:2 51:2 64:2 74:3 77:11,15, 17	addition 14:2	agree 63:19	Apple 38:12,14 95:7,21 96:8,9,11	area 14:5 72:19
acceptable 9:6	additional 17:1 86:1 96:6	agreeable 5:6 98:8	appointed 9:17	argue 8:23
access 37:11 53:12 56:18 78:7,15, 21 79:3, 17 95:5, 10 96:9, 12 97:2	Additional y 86:7	ahead 8:11 11:8 27:7 48:8 63:5 70:12 77:5	approach 3:11	arguing 87:2
addressed 95:14	address 5:7 46:5, 12,13,14	albeit 91:16	approximate 50:6	arisen 36:22
accident 43:22	adjusting 98:13	allegations 10:20	approximate d 54:20	arises 5:14
accordance 83:1	adjustments 5:1	alleged 29:14	April 5:23 17:4 20:1,4, 10,16 21:9,13, 23 22:1 24:11,13 25:5 26:9,13, 18 30:8 31:1,4 34:13,19 37:1 41:24 44:18,22, 24 47:21, 23 48:14, 20 49:1, 18 51:7 53:20	arising 85:18
accessed 95:14	administrat or 9:17 17:16,18	alleviate 10:4	Arizona 6:10 11:21 12:21 21:4 22:2,11, 14,16,19 23:1,3 36:4,12 44:16,17 46:19 47:3,6,23 48:22 49:12,20 50:5,12, 23 52:5, 10,14,17 54:13 55:17	
accident 43:22	admit 27:7 35:19	allowed 73:20		
accordance 83:1	admitted 22:6 26:7 27:3,18 31:8 32:10 35:1,7,11 90:4	allowing 67:12		
accurate 31:3,14 34:18	admitting 28:15	alter 95:1		
accurately 26:16,23 27:14		ample 86:10		
achieved 87:23		and/or 11:5		
		APA 30:17		
		apologize		



800.211.DEPO (3376)
 EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD III

May 01, 2019
Index: arrive..box

56:10	assuming	14:16	82:4	bill
82:2	80:6	20:21		8:5
84:19	assured	24:2,4	basis	bills
85:7,11	70:14	40:22	7:16	70:21
86:9,12,		41:1,16	10:19	
19 88:19	attempt	42:23,24	76:18	bit
90:3	69:10	44:15	92:17	97:24
91:2,6	attitude	48:1,5	bed	bits
arrive	87:13	49:15,17,	61:7	42:1
48:22		19,21	behalf	bleeding
49:19,21	attorney	55:2	3:3,5,8	28:23,24
85:17	17:18	58:12,15	39:16	
	51:22	59:23		blur
arrived	56:15	60:11,12	belief	61:1
21:21	91:21	63:22	24:18,21	
22:21		70:10	believed	blurry
26:9	attorney's	73:16	39:24	26:4 42:2
44:22	91:20,21	75:6 86:1	40:5,8	BMW
47:23	attorneys	89:13	belong	3:23
49:1,17	91:11	90:19	37:24	Body
84:19	authorities	backed	79:15	90:18
ashes	8:19	59:9	belonged	bolt
75:15	authorizati	background	66:18	34:3
76:8,13	on	9:13,16	belonging	bone
77:9	8:18 9:2	10:4	79:18,21	20:20,22
aspects	avoid	Bailiff	belongings	bongo
28:22	96:6	14:10	65:6 67:6	66:17
asserted	aware	Bament	belongs	bongos
31:18	51:5	71:9	39:2	66:20,22,
32:8	60:19	bars	87:11	23 67:4,
35:12	63:15,17	55:22,23	Bendok	6,9
assertions	64:12,14,	base	30:3	book
86:6	22 65:2,7	52:2	33:21	43:15
assets	66:8	60:10	53:18	booking
17:12	90:12	based	54:15	7:13,17
59:12	94:10	15:7	85:1	8:9 93:24
80:6	awhile	16:16	Bernard	94:8
assist	52:22	24:21	30:3	Boswell
53:24		89:18,23	Betty's	22:9,10,
85:3	B	basically	80:19	11
assume	back	5:11 6:1	big	box
18:1,20	11:3,17	11:9	67:9	8:4
62:22	12:1	30:18		43:15,21
89:12				



800.211.DEPO (3376)
EsquireSolutions.com

boxes 43:1,17 60:6,9, 12,15	burden 63:3 81:21 82:18 89:4	17:21	30:3	83:4
Boyer 71:16	business 56:19 57:9	carry 38:7 67:15	Champaign 72:17	Citation 6:20,21 12:19 13:22 15:2,7,9, 20 16:19, 23 17:2, 8,10,11, 24 18:1, 2,3,6,7,9 19:2 39:8,10, 13,14 62:16,20 67:21 76:18 81:10 92:1,3,7 93:10 97:12
brain 28:24	business 56:19 57:9	carrying 38:8	changed 85:16	characteriz ation 62:4 88:24
breached 57:14	C	cars 52:21	characteriz e 67:10 77:4	characteriz ed 18:5
break 62:15 69:11 74:24	C4 20:24	case 10:8 16:8 89:22 98:14	cash 56:7 86:10	Charleston 72:18
break-in 57:7	C6 20:24	catch 10:23	catching 85:15	check 9:12
Brett 37:16 77:18,20	call 19:4,6 63:12 94:16	caused 10:24 20:21 91:17	cell 5:16,20 15:17,22 16:22 32:4 56:14 60:2,5, 17,20 61:13 82:6	checked 8:4
bridge 62:9	called 5:23 6:6 19:13 22:9 47:10 71:3 72:5,8, 17,22,24	calls 61:15	camera 7:23	chest 65:11,12
briefing 3:19,21 98:6	capability 56:18	calls 61:15	capability 56:18	chosen 67:24
briefly 88:6 89:5	car 47:2 52:20,21, 22 53:1 67:17	calls 61:15	car 47:2 52:20,21, 22 53:1 67:17	Chrisman 72:18
bring 91:5	card 56:5,6	calls 61:15	card 56:5,6	Christmas 70:14
bringing 16:6	care	calls 61:15	care	Christopher 3:7
brother 53:5 80:17 81:3	care	calls 61:15	care	circumstanc es 8:21 11:15 13:11,21 71:21 76:19 82:13
brothers 77:21	care	calls 61:15	care	clarificati on 34:24 35:9
brought 37:9	care	calls 61:15	care	clarified 84:14
building 89:10	care	calls 61:15	care	clarify 15:24 54:3 84:5
	care	calls 61:15	care	clear 23:13 77:17,20, 23 78:4 84:10 93:22



800.211.DEPO (3376)
EsquireSolutions.com

Clerk 19:8 92:12	communicati ons 6:9 30:22	37:6,9, 12,18,20, 22,24 38:9,14, 16,20,23 39:1,2 57:7 72:13 82:19 87:11 96:13,14 97:2,4,5, 7	81:2 considers 46:11 constantly 84:4 contacting 51:11 contained 32:7 35:3 contempt 83:6,8 91:10,14, 19 context 52:8 continually 21:14 continuance 5:1 89:23 91:1,12 continue 24:2 continuing 23:24 24:9 control 68:11,19 convenience 11:2 conversatio n 52:3 converted 18:2 convicted 9:18 convincing 90:2 Cook	94:1 copies 6:15 14:10,11 copy 18:14 31:4,15 34:18 35:5 89:16 98:12 correct 3:24 4:1, 16 7:21 16:9 17:15,17, 19 23:16 25:2 26:10,11 33:4 37:20 38:15 39:8,14 40:2 41:11,18, 21 42:7 45:2,3,8 48:21 51:1 53:19,21, 22 54:10, 11,18 58:13,14 59:16 60:2,9,17 63:21,24 66:9 69:6 71:18,22 73:24 74:16,23 75:13 90:23 94:7 98:22
client 5:15 14:15 89:23	comorbidity es 24:23 36:21			
Clinic 22:3,4	company 37:18 38:1,2 39:3 87:11			
clinical 25:8 28:22				
close 71:13 85:17	compelled 15:17 complete 31:3,14 34:18 66:3 completely 17:8 26:17,23 27:14 complex 4:22 5:10 compliance 91:16 complicatio ns 36:22 complied 87:5,16 88:19,23 97:19 comply 8:22 15:8 16:16 83:5 89:1 95:18,19 computer 8:5 16:18 32:4,20 33:19	computers 37:13,14 concerns 77:13 concluded 98:24 condition 23:23 24:19,22, 24 26:13, 17,23 36:15,23 82:10,11 conducted 57:9 confusing 48:4 57:17 connection 90:22 considerabl y 6:22 considerati on 24:24 considered 59:2,3 71:14		
closed 57:23 98:19				
closest 77:12				
clothes 73:11,13				
clothing 66:7 68:4,5,8, 13,20 78:22				
Coast 85:18				
college 76:4				
color 52:23				
combined 15:4				
communicati on 30:18,24 31:4,15, 16 53:18 84:24				



800.211.DEPO (3376)
 EsquireSolutions.com

correctly	24 15:7, 31:1	88:1,4,5, 9 89:2, 12,20	CRN	49:22 61:24 85:9
corresponde nce	16:2,5,12 17:3,10, 13,16,18, 20,24	90:8,9, 14,21,24 91:4	cross	86:21 88:9 90:18 92:24 93:4,11, 12 96:4 98:7
counsel	18:1,7, 11,12,14, 18,23 19:8,11, 24 20:3,9 24:15 27:4,7,18 29:5,9, 12,18 31:9,11, 22 32:11	92:9,15, 19 93:8, 16 94:3, 15,24 95:8,15, 20 96:3, 7,16,20 97:9,16, 23 98:3, 5,20,23	cross- examination	dated 90:15
3:19 4:5, 14 5:4 6:7 7:7 12:11 13:2,14 15:16 67:24 82:17,20 97:10			14:4 29:16 44:13 77:6	dates 28:14,17 42:1 93:2 98:15
counsel's	30:10 88:13,24	Court's 3:18,22 5:14 13:13 15:16 82:5 83:1 88:14,16, 20 89:1 98:11	cross- examine	day 7:19 10:24 24:12 46:24 54:22 56:23 63:10,23, 24 64:5, 16 73:9 96:8
counsels	3:2 89:21		29:14,15	
country	85:17		crossing 45:18	
County	9:7 11:5 94:1,2,3		Crosstrail 52:18,20	
couple	51:8 53:14 72:10		crystal 84:10	
court	3:1,9,12, 23 4:2,8, 12,19,23 5:5,6,9, 24 7:18, 23 8:11 10:9,17 11:8,20 12:7,19, 24 13:2, 6,9,24 14:3,8, 13,19,21,	courtroom 87:14 89:8	CT 28:5	
	61:18 62:12,15, 19,22 63:1,5 64:10 66:15 68:1 75:1,3,5 76:21,23 77:2,5 78:1 80:11 81:9,12, 19 82:1 83:11,18, 20,22 85:20,24 86:22 87:3,5	cousin 80:16		
		create 85:21 96:1		
		created 33:16		
		credibility 91:9		
		credit 56:5		
		cremated 75:12		
		criminal 9:12,16		
			D	
			D-U-V-A-L-L 19:20	
			date 4:9 21:5 28:13,15 29:14 30:5,7,24 31:15,19 35:17 48:18	days 5:3 11:16,21 26:4 51:8 61:17 62:7 87:4,23 88:10 91:22,24 94:18
				deadlines 5:1 98:13
				death 74:21 75:12 76:20



800.211.DEPO (3376)
 EsquireSolutions.com

TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD III

May 01, 2019
Index: debit..effect

debit 56:5	demonstrate 14:1	directed 5:15 88:17	document 23:5 25:13 27:8, 19, 22 28:1, 3, 8, 13, 19, 20 29:19, 23 30:1, 5, 9 32:18, 24 33:2, 11 35:3, 15, 22 51:12	23:5 49:14
deceased 88:16	denied 92:11	directing 83:5	documentati on 6:2 7:15 12:17	drum 66:17, 21 67:15
decendent's 5:16 76:20	deny 82:20	directly 7:17 88:1	documentati on 6:2 7:15 12:17	due 36:22 67:10
December 60:22 69:18 73:24 74:21	departure 88:10	discharged 92:9	documentati on 6:2 7:15 12:17	duly 19:10, 13
decide 85:6	deposed 40:1 59:23	Discover 18:2, 9	documentati on 6:2 7:15 12:17	duplicative 15:6
decided 59:12 85:10	deposition 40:5 60:5	discovery 5:1 98:13, 18	documentati on 6:2 7:15 12:17	Duvall 19:19
decision 12:15	Deputy 7:18	discuss 98:16	documents 6:4, 13, 17 13:12, 13, 17 14:9 25:10 82:7	E
deep 28:21 52:24	describe 33:10	discussed 88:21	dogs 36:14	E-L-L-I-Z- Z-E-T-T-E 19:20
deeply 62:5	desk 41:15	discussion 93:14	door 65:12	e-mail 52:4
deficiencie s 13:3, 5	detail 91:7	disobedienc e 83:9	downstairs 94:16	earlier 51:23 53:16 76:15
deficiency 31:13	determined 72:6	disobeyed 88:1, 3	dress 65:15	early 48:19 65:4
deficient 83:19	Diane 71:10, 12	displeased 57:8	drive 46:22 47:6, 16 52:16 85:6, 10	easier 61:11
delay 38:22, 24	died 51:15 71:18, 20, 21	disposal 76:13	driven 52:21	easily 51:10, 13
deliberatel y 9:9	difference 11:23, 24	dispose 76:7	driving 46:19 55:13 85:7, 16	eat 55:22
delivered 7:19, 23	difficult 11:11	dispute 9:21 10:11	drive 46:22 47:6, 16 52:16 85:6, 10	EDM 38:3
demand 25:6	dire 82:10, 11	distraught 43:18	drive 46:22 47:6, 16 52:16 85:6, 10	effect 88:3
	direct 17:13 19:2, 15 63:7	doctor 32:22 33:20 51:11	drove	



800.211.DEPO (3376)
EsquireSolutions.com

effectively 81:22	embarrassin g 90:20	entry 93:13	14:16 27:3,11 31:8	90:4,5,7 92:11,14
effects 79:15,18, 21	emergency 22:10 25:21 32:22	envelope 7:19,24	32:10 34:22	exist 9:24
egregious 61:8	emergently 20:16 26:21	episodic 57:21	36:1 81:23	existence 79:11
elaborate 11:11	emotional 62:6	equipment 95:12	90:2 92:2,11	exists 86:3
electronic 95:12	emotionally 43:18	error 7:15 8:8 93:13	evidentiary 13:12,23 67:22	expected 5:19
electronica lly 95:2	emptied 42:24 43:15	escalated 96:10	exact 46:5 61:24 72:20 88:7	expecting 7:4
elicit 5:19 6:15 7:4	end 4:8 12:8 54:23 70:3	establish 16:7 31:18 81:23	examination 17:14 19:15 63:7 80:13 82:16	expense 96:6
elicited 17:9 29:12 82:7 84:1,11	enter 3:19,21 88:2 90:19 98:6,17	established 82:8	examined 19:14	experience 10:15 51:10
eliciting 16:10	entered 4:24 12:24 17:6 18:16 87:14 90:10,15, 18 94:24 95:8,17 98:14	establishin g 13:20	excerpts 6:8	expert 13:18
Elle 5:15 13:15 19:21 51:17 67:16 74:7 77:8 82:2 86:20 88:7	entire 49:12 61:8 83:21	estate 3:1 9:17 80:7	examined 19:14	explain 8:14 12:3 32:16 40:16 42:9
Elle's 35:16 81:24 82:8,10	entirety 23:20	Evacuation 24:8	exhausted 50:3 55:10 62:1,3	explaining 15:19
Ellizzette 3:4 19:7, 12,19 83:15		evening 21:7 33:1 44:21,23 46:21 50:1 85:14	Exhibit 25:14,17 27:3,9, 11,20,24 29:20,23 31:8 34:21 35:20,23 36:1 51:21 84:22,23	extensions 5:5
		events 85:21		extent 91:18
		eventually 24:2 87:1 92:21		F
		evidence 12:9		Facebook 30:15 34:5
			exhibits	facie 16:8
				facilities 72:8,11,



15,19	father	23	7:9,10	form
facility	5:24 6:8	felony	8:13,20	10:7
22:8 71:4	13:20	9:18	9:1,9,11,	90:17
72:9,12	20:13,14	felt	15,20	found
fact	21:1,11,	77:12	10:2,24	54:16
6:10 9:13	16,19,24	field	11:6	65:18
38:24	22:15	97:24	fingerprint	85:8
42:20	23:1,4,	figured	s	foundation
51:8	15,21	69:23	7:22 8:16	6:16
82:8,23	24:14,19	file	9:7,12,24	13:19
88:3	25:20	91:22	10:6,8,10	27:5,6,12
factual	28:6,11	filed	11:19	31:10,13,
85:22	35:16	3:18	87:19	22 32:9,
failure	45:16	16:20	88:21	12
15:8	47:8,12	17:2 70:6	93:18	foundational
16:16	50:18,24	files	fingers	l
83:7	51:9,13,	57:5 58:1	9:10	6:12
fair	15 52:6,	filing	finish	13:18
50:16	10,11	91:17	15:13	foundations
84:21	56:10	filings	flight	13:12
fairly	59:15	17:1	46:20,23	four-
26:16,22	66:10	finally	47:13	65:11
27:14	81:6,24	93:20	85:15	fractured
faith	82:8,11	find	86:15	20:20
10:6,9	father's	47:8	flights	frankly
falaxial	23:12,14,	54:12	46:21	83:24
28:7	17,23	83:22	54:13,15,	fraudulent
fall	26:13,17	86:11	17 85:9	70:5
20:19	31:20	96:13	fly	Friday
family	36:15	finding	54:10	11:3
12:23	59:13	91:13,14	86:14	friend
45:12,14,	fault	fine	flying	45:2
15 46:7	8:24	13:8	53:24	48:11
50:11,14,	FBI	97:14	54:9 85:3	49:11
15,18	8:1,16	fingerpr	follow-up	50:19,24
71:14	9:4	ed	76:24	56:9
76:7,13	fear	7:13	77:2 78:3	friend's
77:9	74:19	10:12	fond	45:4
79:4,24	fee	fingerpr	38:12	friends
80:1	8:7	ing	food	45:16
family's	feel	fingerpr	55:20	71:4,6
52:13	67:22	ing		
	fees			
	91:20,21,			



TRANSCRIPT OF PROCEEDINGS
IN THE MATTER OF THE ESTATE OF JOHN MCDONALD III

May 01, 2019
Index: full..Honor

full 6:16 19:18 45:4	91:3,12	grave 23:24 36:17,19, 20	90:4,14	held 83:6 91:14
furry 65:23	goodness 51:16	gray 34:17	Hang 93:3	hematoma 29:3
G	Gosselin 3:5,24 4:16 7:8, 21 8:3 9:5 10:5, 15 12:13, 22 14:18 15:12 16:1,4, 13,14 17:4,12, 15,17,19 18:15 29:1,4 59:20 62:21,24 63:4,6,8 64:11 66:12,16 67:18 68:2 75:11 76:22 80:12,14 81:4,8,11 89:18 90:9,16, 23 92:8 93:6,24 94:2,7,13 95:18,21 96:5,19, 22 97:21	grayed-out 30:21	happened 8:4 10:17 42:18 43:1 69:20 85:8	hematomas 20:22 24:8
Gabrielle 3:5		green 52:24	happy 6:14 13:14 14:12	hideous 61:9
gas 55:13,14		Gregory 29:13	headed 47:2	highland 78:13,16
gathering 63:10,12		guardian 64:17	healthy 59:20	history 10:7
gave 56:4 86:10 98:15		guess 17:16 51:8 62:16 81:13	hear 81:12	hit 34:9
generally 24:7		guest 65:13 71:23	heard 66:14 89:14 97:15,16	Hoffman 7:11,18 94:8
generated 28:15 32:17,23 33:2,11 34:10		guy 56:4	hearing 3:13,17 4:9,19 5:8 12:9 13:9 15:4 18:7 89:21 92:7 98:7,21, 24	hold 91:9 92:5
Ghillie 66:3		guys 55:12	H	holiday 56:12
girlfriend 23:5,7				holidays 70:15
give 4:9 11:15 52:8 72:10 91:22 92:23 96:12,17	Gosselin's 19:1	half 80:17 81:2	hearsay 29:6,8 31:16 35:13 66:12	home 21:3 23:12,14, 17 52:14 59:6,13 69:14 71:23
gladly 83:3	grab 33:14 53:15	hall 89:13	heirloom 79:4,6,7, 9,11,23 80:1	homes 53:11
good 14:18	grabbed 47:1 90:17	hand 37:6,7 60:20		honest 42:2 61:5
		handed		Honor 3:10 4:4 5:8,23 6:4,14,17



800.211.DEPO (3376)
EsquireSolutions.com

8:10,15	hospital	19 70:13,	impede	57:13
9:5,22	13:20	15 71:21,	9:10	injuries
10:5 12:3	20:15,17	24	importance	21:2,6
13:13	21:17,20	housekeepin	36:24	22:7
14:12,23	22:11	g	37:3	inside
15:4,6,11	23:15	94:22	important	71:24
16:4,9	24:5,15	98:1	82:14	instance
18:22	26:9 47:9	hurried	88:8	98:18
19:6	50:19	11:1	imposed	instruments
27:2,6,12	82:12		91:5	66:19
29:15	hospitaliza		impossibili	intake
31:7,12	tion	I	ty	7:13 26:6
35:6,15	12:24	idea	85:22	intending
44:10	31:20	51:4 62:2	91:15	70:10
48:4 58:4	88:18	identificat	include	intends
62:11,14,	hospitalize	ion	6:7 16:21	12:15
20,21	d	25:14	includes	intention
63:4	6:1	27:10,20	89:2	76:7
66:12	20:13,14,	29:20	including	interfere
67:18,20	18 21:11,	35:24	68:20	95:1
76:17	12,13,14,	III's	69:16	interfering
77:1	24 22:16	37:12	incredible	25:8
80:10	23:1	Illinois	84:2	interim
81:11,17,	28:11	27:13	individual	17:5
20 83:23,	35:17	36:13	49:14	internal
24 84:9,	47:12	37:15	84:24	7:14
15 87:9,	81:24	41:4,6,9,	85:2	30:13
13 88:6,	82:9	10,14	inform	involved
19,22	hours	45:21	76:6	16:23
90:16	11:6	46:13	information	iphone
92:14,16	12:5,6	47:17	13:1	17:7
93:3,21	25:22	49:15,17,	15:21	39:4,12,
94:21	55:7,8,9,	19,21	46:1 95:2	17 40:5,
95:24	10 93:19	53:8	97:5,7	14 58:9,
97:14	house	58:13,17	informed	11 61:23
98:8,11	42:10,11,	60:7	5:24	87:1
Honor's	19 50:8,	72:18	initial	91:15
92:17	10 53:10	86:9,12	70:5	issue
98:6	63:10,16,	image	initially	6:11 7:9
hope	18,20	27:15	20:15	13:10
89:9	64:1,4,	immediately		
hopeful	13,18,24	28:17		
24:1	65:3,9			
hopped	67:11,12			
47:2	69:11,15,			



800.211.DEPO (3376)
 EsquireSolutions.com

15:18	93:24	16 40:5,	kilt	15:17,21
31:21	94:4	14 63:18,	65:16,18,	16:17,18,
56:14	January	19 64:18	21 68:13,	22 17:6
81:22	5:14 6:21	68:4,11	20,21	37:22
83:14	16:20	71:6	78:5,7,10	38:8
86:22,24	39:19	76:9,13	kind	56:14,16,
90:22	40:24	77:9	17:10	19 57:10,
94:22	41:2,9,14	78:5,7,9,	42:13	12,19
issued	57:1,6	12,15,22	52:17,20	61:13,23
6:21	87:3,23	80:5	kindly	82:6
15:24	Jason	Judge	86:19	86:24
16:2,15,	38:5	3:14 11:7	Kinnally's	87:1
16 17:2	jeans	12:17	93:8	91:16,17
39:15	69:22	31:10,24	Klapuffel	94:22
issues	Jeff	44:12	67:9	95:3,4,5,
15:3	3:3	83:12	laptops	10,11
87:18,19	Jerry	86:16	knew	87:20
itemized	67:9	87:1 88:1	31:19	large
91:23	John	89:5	43:16	53:11
items	37:11,15	95:12	69:9 72:8	largest
7:3,6	38:5,11	97:1	knowing	29:3
15:22	42:10	justify	12:15	late
16:23	58:23	51:15	knowledge	91:16,17
42:7,16	63:15,24	K	36:16	98:17
61:13	64:12,17,	Kane	51:24	laugh
62:17	22 65:4,8	9:7 11:4	53:2	69:21
63:16,18	66:18,19	94:2,3	60:18	launching
64:1,13,	67:7,12,	keeping	79:11	42:13
23 65:8,	13,15,16	50:2	L	law
17 69:5	68:14	Kelly	lacking	27:13
70:11	69:7,10,	19:11	91:3,8	30:11
72:4	15 71:5,	Kennedy	Lake	59:22
itinerary	10,17	79:9	75:18	lawyer
86:15	74:2,4,6	khaki	landing	29:9
J	76:3,16	52:24	33:15	lay
jacket	77:11,12	kidnap	language	6:16
65:20	79:7,15,	69:10	95:8	13:19
68:22	18,21	killed	laptop	lead
jail	80:20,21	71:19	5:16,18	87:8
7:12,17	81:2	76:16	6:23	learn
11:5	John's			40:10,13
	37:13			
	38:10,17			
	39:4,11,			

learned	34:3	46:17	24 29:19,	88:13
59:10			22 35:23	89:3, 8, 22
leave	lighter	locked	51:21	90:12
6:14, 18	38:7	41:22		
24:14	limited	43:12, 14	matter	Mcdonald's
44:20	68:20		5:2, 7	10:7
47:11, 17,	list	lot	19:21	63:10
22 82:3	72:13	45:17	31:18	84:22
84:12	listed	lots	32:8	87:12
98:16, 17	18:19	68:16	35:12	means
leaving	literally	Louis	39:11, 15	32:3
46:21	47:1	79:8	40:2	meantime
			81:14	97:10
			97:22	
left	live	M	matters	medical
22:17, 19	21:1		5:11 98:4	6:9
36:5, 11	45:19, 23	M-C-D-O-N-		13:17, 19
40:20, 22	53:7, 9	A-L-D	Mattoon	51:12
44:17		19:20	72:18	86:18
45:2	lives	made	Mayo	meet
47:20	46:9	29:14	22:2, 3, 4,	5:4
48:11, 12,	living	31:4 33:3	10, 14	member's
14, 18, 19	42:15	77:16	25:21, 22	12:23
49:20	58:21, 22,	84:10	28:10, 11	members
55:7	24	86:6, 9, 10	30:4	76:7
57:20, 22	locate	90:12	51:13	memory
64:6	5:20	94:16	Mcdonald	62:1, 3
69:21, 22	40:18	make	3:1, 4, 6, 8	mention
70:11	43:11	5:6 12:14	5:15, 17	68:8
84:13, 15,	44:1	14:10	7:4, 12	merits
17 85:12	82:24	20:6 49:4	8:5 9:8	4:5
88:8 89:8	located	54:8 57:4	12:11	message
97:24	58:16	62:8	19:7, 12,	32:7
legal	63:20	85:4, 20	17, 19	33:17, 21,
51:12	locked	makeup	27:23	23 54:14
59:5	95:4	70:12	29:16	85:13
length	log	management	32:16	messaging
82:12, 21	57:18	98:14	36:3	30:13, 14
88:16	long	March	37:12	32:3
89:3	21:11	90:15	44:15	messenger
Lieutenant	22:15	91:20	48:10	30:16
7:20	46:15	marked	51:20	34:5, 6
life	54:19	25:13, 16	62:23	
73:10	longer	27:9, 19,	63:1, 9	
lightening			86:2, 6, 20	
			87:7	



TRANSCRIPT OF PROCEEDINGS
 IN THE MATTER OF THE ESTATE OF JOHN McDONALD
 May 01, 2019
 Index: Michigan..O'KELLEY

Michigan	56:4	67:16,18	neurosurgic	3:3,10,14
75:18			al	4:4,11,
microphone	37:17	69:8,17,	24:3,5	14,23
48:1	61:11,12	23	never-	5:10
midnight	morning	moving	ending	8:10,12
47:19	7:11	24:2	84:5	9:21
48:11,13	21:21	musical	news	11:7,9,24
84:14,18	25:23	66:19	93:4	13:5,8,10
85:13	48:19		nieces	14:7,11,
Mike	49:1,24		77:14	17,23
77:12	55:8,9	N	night	15:1,10,
80:15,19	74:5		24:4 26:6	15 16:9
miles	84:16	named	46:20	17:23
71:4	mother	64:17	non-banner	18:5,13,
mind	23:12,14,	names	22:8	22 19:5,
31:19	17 28:9	72:20,21	non-	6,16
35:2	44:22	narrative	compliance	25:15
mine	49:4	84:5	82:5	27:2,6,
68:15	50:13,19,	naturally	nonresponsi	12,21
minor	24 51:24	60:14	ve	29:21
91:18	52:12	necessarily	67:19	31:7,12
minute	54:6 56:9	96:2	north	32:14,15
14:13	77:13	necessity	22:4	34:21
47:24	81:5,7	90:12	notice	35:5,14,
minutes	85:3	needed	93:16	21 36:2
75:2,3	Mother's	37:6,7	noticed	43:7 44:9
89:9	63:10	57:3,23	93:5,6	46:2
missing	64:5	82:11	notices	51:17
31:23	motion	needlessly	93:1	59:17
mom	3:17,20	96:1	November	61:15
40:20	4:2,10,	nephews	70:3	62:13
53:24	13,15,17,	77:14	number	64:9
54:1,3,5	20 91:18	neuroradiol	16:22	67:20
moment	92:3	ogical	64:1	74:24
37:19	93:16	28:4	83:13	75:2
89:17	95:15	neurosurger	84:6,11	76:17,24
97:18	96:3	y		77:3,7
Monday	97:19	20:23	o	78:2
33:5,7	98:7	24:1 30:3		80:9,23
money	motions	51:10	O'KELLEY	81:17,19,
	93:9			20 88:6
	move			89:17
	42:6,17			90:7
	56:13			92:14,16



800.211.DEPO (3376)
 EsquireSolutions.com

20 95:24	57:11	12:16	ordered	ownership
96:18	obtaining	26:12	18:6	59:9
97:14	87:18,19	86:4 96:4	19:24	
98:2,4,22	offer	opposing	44:6	P
O'Kelley's	34:21	13:2	60:16	
18:20	offered	oral	78:9,18,	p.m.
O-B-A-N-N-	10:6	97:19	24 79:20,	34:15
O-N	27:10	ordeal	23 80:5	53:21
23:10	31:17,18	50:4	Orders	85:2,14
45:7	32:8	order	18:16	98:24
oath	35:24	3:18,22	87:5,13	pack
63:2	offering	4:24 5:14	88:2,4,14	70:2
Obannon	35:18	6:6 11:4	original	packed
23:10	office	12:1,24	33:16	40:20
45:5	10:10	13:13	originally	42:17,19
85:23	11:5	15:8,16	22:6	69:17
86:3	41:16	16:17	45:17	70:7,8
object	59:22	17:5	98:5	73:16
15:14	79:8,9	18:12,17,	originals	pad
27:5	87:22	19 54:20	8:1	42:13
31:10	94:3	57:18	outfit	paid
76:17	office's	59:12	66:4	8:7
88:23	93:8	70:5	overlap	pans
objecting	officer	73:18,21,	19:1	43:22
35:13	7:11	23 74:20	overlapping	paper
objection	94:8,10,	81:15	15:3	29:15
3:21 4:6	16	82:3,6	17:21	96:1
18:10	offices	83:1,5,	overlaps	papers
27:4	30:11	18,22	6:21	43:21
29:1,4	open	87:3,4	overnight	paperwork
31:9 43:5	18:1	88:2,17,	50:6	13:3
49:8 58:4	57:20,22	20,23	Overruled	par
61:15	92:6	89:1,19	61:18	87:17
64:9	97:12	90:10,14,	68:1	paraphrase
66:12	opened	15 92:23	overwhelmin	74:9
objections	7:24	93:18	g	pardon
14:8	opportuniti	94:24	61:6	65:12
29:10	es	95:8,10,	owned	parents
observe	86:10	16,20	59:6,15	58:18
26:12	opportunity	96:12,16	owners	59:6
obtain	4:17	97:2,13,	58:19	
28:8 30:9		17,18		
		98:12,14,		
		19		



parents' 50:8,10 58:16 59:3 64:13,18, 24 65:3,9	Pat 71:7 72:7	86:18	photograph 6:8 25:20,24 26:22 27:13,16, 17 51:22, 23	10:23
parietal 20:21	patient 51:14	perspective 59:5	platform 33:15 38:13	
Paris 41:4,6,9, 10,14 42:7 45:20,21 46:13 47:17 53:7 58:12,16 60:6	pave 94:17	petition 3:17,18 4:20 89:16 91:23	point 8:13 68:3 87:8,18	
part 38:10,17 39:7 58:19 66:1 67:4,6,9	pay 55:23,24 56:2,5	Petitioner 16:6 81:14 83:11	photographs 56:9 79:4,12, 24 80:2	police 64:7 69:9
parties 92:12,22	people 6:9 38:5 40:21 43:9 50:17,22 57:2 77:12	Petitioners 91:22	photos 79:6,9	politely 57:8
party 19:21 95:1	percent 34:20	petrified 69:11	physically 37:7	portions 30:21 46:6
passed 36:13	period 50:23 82:9	Petrol 55:22 56:3	physician 49:5	portray 26:17,23 27:14
password 57:10,18, 24 58:1 94:23 95:5,9,10 96:2,17, 23 97:1, 3,6,8	permanent 46:12	phone 5:16,20 7:1 15:18,22 16:18,22 32:4,20, 21 33:18, 19 39:18 40:19 41:7,13, 20,23 42:21 43:12 44:1,4,7 49:5 56:14 60:2,5, 14,17,20 61:13 82:6,21 83:3,6 95:3	pick 55:21	posed 49:6 58:5
past 9:17 33:7	permission 98:6	picture 26:16 27:14	picked 43:22 69:4	posit 82:18
	person 27:15 30:19 56:7 71:9	piece 29:15 95:12	picture 26:16 27:14	position 70:18
	personal 7:3 15:22 37:14 63:16 64:13,23 65:8 76:19 79:15,17, 20	Pivoting 86:24	place 17:1 32:12 41:8 43:19 94:5	possession 7:5 37:20 38:18 39:5 40:14 56:16 68:10,19 87:21 96:14
	personally 57:6	photo 52:4 79:7	places 72:22	possessions 68:11,12
	personnel		Plaintiff's 84:22	potentially 86:5
			plane	pots 43:22
				practically 71:3



pre-existing 24:22,24 36:23	prior 42:10 59:24 96:16 97:17,18	producing 38:22	58:2 94:23 97:6,8	84:23
pre-frontal 20:20	Probate 18:4	production 6:23 7:1, 3 15:17	Protection 70:5 73:18,21, 23 74:20	purpose 9:11,19 18:9 35:10
preceded 93:12	problem 9:4 10:4	program 33:14,22	protein 55:22,23	purposes 35:1 89:6
prefers 15:6 92:16	proceed 18:18 19:1,11 63:5	progressing 24:2	prove 86:11 88:18 91:5	purse 65:23
prepared 5:17 18:8	proceeding 13:23 16:19 17:9 39:8 67:21	projects 57:3	proof 35:1 51:6,9 83:16,19, 23	pursuant 15:8 83:18
presence 12:22 37:15	proceedings 8:17 24:15	proofs 81:16 91:1,2	provide 6:2,14 13:11,14, 24 14:9, 12 32:11 35:5 46:1 81:23 82:6 86:1 88:17 89:15 91:1 95:9	pursue 9:19
present 12:15 15:19 19:24 27:16 37:1,4 63:13 64:18,20 75:21,23 82:1	process 9:10 59:8	property 7:3 15:22 53:11,12 58:19 63:20 64:13,23 65:2,8 76:19	provided 5:18 8:18 9:23 10:2 13:1 28:9 82:17 83:16,22 86:2 87:2,4	put 12:9 40:24 41:15 43:16,23 57:8 60:11,15 61:11 62:7 70:18 90:5
presented 25:21 59:22 85:21 86:22	processing 8:2,7	proposal 12:11	Q	
previously 27:8 35:22 40:1 51:20	produce 5:15 6:6, 7,17 39:1 44:6 61:14 78:9,18, 24 79:20, 23 80:5 82:24 83:3,6	propose 84:4	question 6:5 13:15 15:1 20:6 39:20 46:2 47:5 48:3,12 49:6,9 51:18 54:24 55:1,3 57:16 58:5 64:15 67:19,21 68:18	
prima 16:7	produced 5:21 6:23 38:20 82:20	proposed 5:4 12:12 98:11,15	providing 82:4	
prime 52:11		proposing 87:10	proximity 59:1	
prints 9:13		protect 59:12 69:24	Psychotron 76:5	
		protected 57:10,24	purge 83:8	
			purported 32:7 82:5	



75:5	re-entering	recently	reflects	70:13
76:12	89:22	87:22	28:19	renovated
80:24	re-opened	recess	refuel	42:12
84:3,10,	57:24	14:14,20	55:13	repeat
11 96:21,	reach	62:18	refused	50:21
22	86:18	75:4	37:17	repeatedly
questioned	95:7	recognize	regard	88:15
60:1	reached	25:17	6:19 14:5	rephrase
96:23	95:6	28:1	29:12	48:3,7,8
questioning	read	29:23	97:12	replace
58:10	48:5	reconcile	rehab	70:17
67:23	55:2,4	84:21	24:3	reply
97:1	75:5,7	record	related	88:5
questions	ready	3:2 8:16	80:19,21	report
53:15	14:21	9:3 19:18	relating	8:9 28:4
59:17	62:19	55:4 75:7	15:21	reported
76:22	reason	83:18	relaxed	29:13
81:8 86:5	9:14	89:6,7	13:23	31:13
R	42:12	90:5	67:22	reporter
	43:19	92:18,19,	released	48:5
	52:11	21 93:15	8:6	54:24
raised	58:24	97:24	relevance	55:2,5
31:17	73:15	98:21	76:18	75:8
96:3 98:5	74:19	records	relevant	98:23
random	83:2,10	6:9	31:20	reports
72:21	92:5	13:17,19	82:9	7:17
ranges	reasonable	recover	remain	request
3:15	24:18	17:11,12	59:13	11:7
rate	91:21	18:3,6	remains	requested
89:14	recall	referring	80:6	9:16
Ray	55:12,16	44:23	remember	13:1,13
71:7,8	61:16	45:15	61:20,24	55:5 75:8
72:6	63:9	54:1,4	67:3,5,8,	requesting
re-appeared	90:17,19	61:3	15	7:12 8:8
5:3	received	84:12	remembers	required
re-calling	4:16	reflect	84:15	20:23
62:22,23	27:10	34:17	removed	83:17
re-direct	35:24	89:7	64:1,4,8,	requiring
62:12,13	95:22	reflect's	23 65:3,8	17:6
80:11,13	receiver	35:16	69:15	
	32:13	reflecting		
		88:3		



residence	25:9	94:4	45:5, 8, 11	42:22
41:5, 10,	rest	rude	48:11	searched
13, 17	45:23	77:16	49:11, 14	42:21
42:17	restroom	Rule	50:20, 24	82:23
58:16, 17	55:15	5:13	51:3	Section
59:3, 4	resume	6:22, 24	52:13	18:3
resolve	63:1	7:2	53:12	securing
97:9	return	12:10, 20	56:9	74:18
resolved	36:3, 14	15:2, 7,	85:23	security
97:22	37:17	18, 23	86:3	94:16
respect	returned	16:2, 6, 9,	Sarah's	seeking
12:21	89:9	11, 15, 24	23:9	89:1
32:6	returning	17:8, 9, 22	satisfactio	96:13
58:9, 10	69:18	18:19	n	16:10
60:1	review	31:21	satisfied	seeks
67:11	12:14	81:13, 14,	82:18	6:22 7:1,
83:12, 15	14:3, 14	21, 22	83:10	2 15:20
94:22, 24	35:15	82:4	89:4	sees
97:1	96:4	83:10, 13	Saturday	46:7
respectfull	revisit	89:16, 18,	74:5	segway
y	12:8	21 90:11,	schedule	37:10
9:5	revisiting	19, 22	3:9, 20, 21	self-
respond	7:8	91:4, 13	98:7	servng
4:6, 18	rid	92:10	scheduled	83:21
20:7 29:9	43:4	ruling	89:20	86:8
responded	ridiculous	92:17	scheduling	sell
39:10, 13,	39:1	Rummerfield	98:20	3:17, 23
15 84:4	87:10, 15	71:7	school	4:20
Respondent	road	S	11:10	send
81:16	67:17	S-A-R-A-H	Scottish	85:13
responding	room	45:9	68:22	sender
67:20	22:10	sake	78:13, 15	32:12
response	32:22	51:16	Scottsdale	sense
12:10	41:1	sanction	22:2	85:4, 20
31:11	42:23	91:19	screen	sentence
35:14	43:1	sanctions	30:10, 12	15:13
39:7	58:12, 15,	92:10	33:3	separate
88:12	16 60:11	Sarah	53:15	8:16 15:5
95:22	65:12, 13	23:8	search	19:3
97:2	Route	36:8, 9	10:4	separated
responsibil				73:17, 19
ities				



sequence	56:3	simple	89:7,10	speculating
85:21		3:15,16		34:8 42:3
service	44:21	5:7 84:3	situation	73:1
22:5 34:6	54:16	87:19	24:20	
	84:18	97:22	61:8	speculation
set	85:12,16	simply	94:10	10:19
14:10		6:5 10:5	small	61:16
66:17	shorts	14:1	65:4	spell
98:7	65:5,13	82:15	94:21	19:18
sets	shot	simultaneous	Snaggot	45:6,8
66:21	30:10,12	sly	33:12,13	spelling
Settle	33:3	32:21	sold	45:9
47:24	53:15	single	42:11	spent
	76:5	43:15	solve	96:8
severe	show	sir	9:4	spoke
20:23	5:13,18	21:15	son	7:11 49:4
shape	6:22,24	22:12,23	80:19	sporrán
10:7	7:2	23:2,22	sort	65:23
Shawn	12:11,20	25:3 27:1	32:2	68:24
3:6,8	15:2,18	28:12	93:12	spotty
37:16	16:2,11	29:24	sought	91:8
63:10,17	18:19	30:20,23	35:10,11	spouse
64:2,17	25:10	31:2,6	source	88:16
66:10	27:22	34:12,14,	32:17	spread
67:11,13	31:21	16,20	speak	75:16,17,
69:8,11,	51:6,9	37:21,23	11:14	19
24 70:5	81:21	38:19,21	43:8	spreading
77:18,20	83:13	39:9 40:3	51:11	77:9
96:8	90:11	44:2	speaking	Springer
Shawn's	98:12	45:22	24:7	67:9
63:16,18,	showed	49:2	44:21	squares
20 67:11	51:22	56:12	specific	34:17
Sheriff's	showing	62:24	13:1 95:7	St
10:9,12	16:12	sister	specificall	79:8
11:5 94:3	25:16	53:5	y	Stable
shirts	27:23	77:13	60:6	36:19
65:10,13,	29:22	sister-in-	95:19	staff
15	shown	law	specifics	28:10
shoes	51:20	53:6	97:6	stand
65:14	side	sit	speculate	63:2
66:3	24:5	44:3	42:4	93:19
Shop	81:13	78:4,12,		
55:22	sideways	21 79:3,		
	34:4	10,14		



standards 13:23 67:22	staying 11:21 50:5 58:23 59:1 71:17	storing 63:16,17	28:5	49:3 55:8
stands 95:13	steal 69:12	straight 23:6 64:6 84:6	subsequentl y 40:10	84:19 85:18
start 3:16 44:16 61:22	stealing 69:9,24	stricken 67:19	substance 9:10	supply 9:3
started 54:15	stenosis 20:24 24:10	study 28:6,7	substantial 83:16	suppose 6:13
starting 16:6	step 40:22 81:9	stuff 57:5 68:8 69:8,12, 16,24 70:1,8, 12,16 71:10 73:12	substantiat e 6:3	supposed 11:13 61:14 82:1
state 31:19 35:2 89:24 90:2	stepped 89:13	Subaru 52:20	substantiat es 28:20	supposedly 97:18
stated 44:17,19 53:17	steps 95:6	subdural 20:22 24:8 29:3	suffered 21:2,5	Supreme 91:4
statement 32:6 96:7	stop 37:19 55:12,14, 19,21	subject 6:24 7:2 14:5,8 15:15 17:7 18:16 27:18 35:19 82:4	sufficient 32:9 83:16	surgical 22:4
statements 29:12 35:3 86:8	stopped 56:3	Subaru 52:20	suggested 9:6 58:3	surmises 87:12
station 52:19 64:7	stopping 55:16	subdural 20:22 24:8 29:3	suggestion 88:13	surrounding 76:19 82:13
stay 3:17,20 4:2,13, 17,20 23:11 49:11 50:6 52:13 70:10 98:7	storage 68:6 70:21 71:3 72:8,9, 11,12,15, 17,19,22	subject 6:24 7:2 14:5,8 15:15 17:7 18:16 27:18 35:19 82:4	suggested 58:3	survive 24:19
stayed 23:20 36:9	Store 96:9	submit 8:20 9:1 10:1 11:13,19 83:20 85:20 92:11	suggestion 88:13	sustained 20:19,22 29:18 32:11 43:6 49:8
	stored 64:12 74:22 95:2	submitted 8:1,12 92:22	suggestions 87:6,9 88:14	suggests 58:7 64:10 66:15 76:21
		subsequent	suggests 83:9	suits 65:14 69:22
			suitcase 65:4	swear 19:8
			suits 65:14 69:22	sworn 19:10,14
			summary 81:12	symbol 34:1,2,8
			sun 23:19 48:23	syncs



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32:19	83:19	84:8 98:9	18 11:17,	times
system	86:7	things	19 12:2	8:24
8:5 28:16	87:12	3:10	14:1,6	10:11
30:13,14	91:5	15:21	15:20	55:16,18,
32:3	95:20	33:15	24:6	19 57:20
34:19	97:7	42:1,14	26:20	61:5
	testified	43:3 47:2	32:12,22	84:6,11
T	19:14	52:12	34:11,13	Tindall
	26:5,8	57:2,13	35:17	7:20
	31:14	59:11	37:11	today
T-SHIRTS	53:16	60:13,23	41:19,22	3:9 7:5,
65:5	58:11	61:6	44:16	6,13 8:14
table	60:4	62:5,6	45:20,24	11:2,4
40:24	61:16	66:10	46:6	25:1,4
41:16	69:4 77:8	67:12	47:17,18	44:3 51:3
taking	82:12,21	68:6,16	48:22	79:10,14
14:16	83:4 85:5	69:15,20,	49:12	84:1
67:14	89:3	22 70:7,	50:3,23	88:15,18,
talk	testify	17 71:5	54:19	24 89:3
33:19	5:18	73:11	56:24	90:4
98:2	13:16	74:6,15	57:5	91:1,24
talked	18:8 69:6	76:4	58:12,18,	95:22
76:3,10	85:24	83:14	20 59:8,	98:13,17
talking	testifying	87:20	24 60:17	told
98:20	88:15	96:10	61:17	25:6 43:9
technically	testimony	97:22	63:13	66:10
47:20	5:11,19	thinking	68:3	67:16
tells	6:2,15	43:22	69:13,14	74:22
85:2	7:4 14:2	thought	71:24	tomorrow
ten	16:10	43:17	75:21	11:2,13,
73:4	18:10	60:8,14	77:15,19	18
tennis	29:11	69:19	78:1	tonight
65:14	32:1,5	82:22	82:2,9	11:17
terminated	76:15	three-	85:8,10	totally
73:24	82:7,17	drawer	86:21	62:1,3
terminating	83:21	65:11	88:7,22	totes
74:21	84:1	three-	89:21,23	60:9
terms	86:1,2	sentence	90:13	town
50:18	88:18	86:19	92:4	10:22
61:11	91:7	throw	94:6,15	track
82:16	theory	62:8	98:10	50:3
	94:11	time	timeline	transaction
	thing	8:7 10:1,	84:9	
	34:8 54:7	13,14,16,	timely	
			7:16	



86:8	35:2,12	56:8	vehemently	
transferred	turn	68:14	77:16	W
22:9 24:4	16:17	understandi	vehicle	
transferrin	17:6 39:2	ng	52:16,17	wagon
g	60:17	4:13 8:3,	55:13	52:19
59:9	87:11,21	14 9:8,23	vehicles	wait
transit	turned	10:3	53:3,12	54:23
86:12	91:17	11:10	ventricular	walked
transported	94:23	15:15	28:23	69:19
25:22	turnover	28:18	verified	wanted
travel	92:3	31:1	51:10,13	63:22
12:1 23:3	97:13	35:16	verify	66:9
36:6,11	type	42:6	50:17,22	70:13
traveled	30:16	82:10	86:2,5	76:2
38:6	33:20,22	understood	verifying	77:11,17
traveling	52:21	4:11	6:10	Warmbold
57:22	typed	14:7,17	view	3:7 4:1
treat	32:20	32:14	35:16	12:16,20,
18:8	33:20	37:5	violated	23 27:5
treated	34:11,18	82:14	57:15	29:6,11
9:9 24:9	72:12,16	94:20	58:3	31:10,24
26:20,21	types	unencapsula	violation	34:24
treating	76:3	ted	89:19	35:9 43:5
88:13	U	28:23	Virginia	44:12,14
treatment		unit	36:14	46:8
24:6	U-HAUL	24:3,5	45:17	48:3,7,9
triggers	72:20	95:11	46:7,10	49:6,10
62:5,6	unable	units	visit	51:19
trip	25:5	72:17	14:6	55:11
12:21	95:13	unproven	21:16,19	58:4,8
trouble	undercut	10:20	22:15	59:21
3:13	82:16	unsuccessfu	23:3,21	61:21
true	underlying	l	52:11	62:10
31:3,14	82:3	7:10	visited	83:12
34:17	understand	untrue	26:13	89:5
40:9 60:4	3:19 9:1	40:11	visiting	94:21
85:21	12:5	v	23:15	95:16,19
truth	32:23	vague	52:6,10	96:24
31:17	36:24	32:2	watched	
32:8	37:3 54:9		ways	
			wear	



78:13,16	woman	37:16
wee	71:17	43:3
25:22	work	
55:8	95:9	
weeks	working	
6:12	57:3	
13:18	worried	
22:17	59:18	
50:7 52:6	worry	
56:11	74:7	
86:17	Weppler	
Weppler	Writ	
28:5	90:18	
29:13,17	writing	
West	4:6 39:15	
23:19	54:14	
85:18	written	
whereabouts	8:18 9:2	
51:6 60:1	39:14	
willful	98:18	
83:9	wrong	
window	8:4 59:19	
11:17	87:16	
wing	90:17	
24:3	Y	
wishes	year	
8:15	17:4	
75:16	44:18	
76:9	59:24	
94:17	years	
withdraw	45:13	
92:12,22	66:20,23,	
withdrew	24 68:7,	
5:2	17 76:11	
witness'	79:6	
35:2	yesterday	
witnesses	96:8	
6:12	98:19	
14:22	York	
81:10	11:22	
92:6		



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1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF K A N E)

3 IN THE CIRCUIT COURT OF KANE COUNTY
4 FOR THE SIXTEENTH JUDICIAL CIRCUIT OF ILLINOIS

5 IN THE MATTER OF THE)
6 ESTATE OF:)
) No. 17 P 744
7)
)
8 JOHN MC DONALD, III.)

9
10 REPORT OF PROCEEDINGS had at the hearing in
11 the above-entitled cause, before the Honorable
12 JAMES R. MURPHY, Judge of said Court, on Wednesday,
13 October 23, 2019.

14 PRESENT:

15 MR. PATRICK M. KINNALLY,
16 appeared on behalf of the Estate;
17 Administrator, Shawn Mc Donald.

18 MS. GABRIELLE A. GOSSELIN,
19 appeared on behalf of the Estate;
20 Administrator, Shawn Mc Donald.

21 MS. ELLIZZETTE DUVALL MC DONALD,
22 appeared pro se.

23 MARIANN L. BUSCH
24 Official Court Reporter

1 THE COURT: Okay. This is the Estate of John
2 Mc Donald, III, 17 P 744. Would the parties please
3 identify themselves?

4 MS. GOSSELIN: Gabrielle Gosselin on behalf of
5 the Estate of John Mc Donald --

6 THE COURT: Speak up for...

7 THE COURT REPORTER: There's a fan going up here,
8 too.

9 MS. GOSSELIN: Oh. Gabrielle Gosselin,
10 co-counsel for the estate, the administrator, Shawn
11 Donald.

12 MR. KINNALLY: Good morning, Judge. Pat Kinnally
13 for the Estate of John Mc Donald, III.

14 THE COURT: And you are?

15 MS. MC DONALD: Ellizzette Mc Donald, on behalf
16 of John Mc Donald, III, my husband.

17 THE COURT: Okay. There are various motions that
18 have been continued to today; and after
19 Ms. Mc Donald's attorney withdrew -- I believe last
20 month, probably in September -- the order said that
21 these motions would be entered and continued till
22 today and that someone would file a substitute
23 appearance for Ellizzette Mc Donald.

24 And, Ms. Mc Donald, you say you have an

1 appearance ready to file?

2 MS. MC DONALD: I do, sir.

3 THE COURT: Do you have that, the original?

4 MS. MC DONALD: I have that right here.

5 THE COURT: Can you give a copy to counsel to
6 your right? You can keep a copy and you can give me
7 the original and we'll have this clerk file it,
8 because I don't think there's a fee due because
9 you've had attorneys before, so I'll allow that to be
10 filed.

11 And now you have a -- you say that -- I
12 mean, we're ready to go on some of these motions and
13 talk about them this morning and possibly rule on
14 them, but you have an oral motion to continue;
15 correct?

16 MS. MC DONALD: Yes, sir.

17 THE COURT: What is your good cause? First, I'll
18 swear you in. If you will raise your right hand?

19 (The oath was thereupon duly
20 administered to Ms. Mc Donald by
21 the Court.)

22 THE COURT: Okay. What is the good cause for you
23 to delay --

24 MS. MC DONALD: I --

1 THE COURT: -- the hearing of these motions?

2 MS. MC DONALD: Well, I'll leave it to you to
3 determine if it's good cause.

4 I have had difficulty coming back and forth
5 to the Chicago area because I had a back injury in
6 July. I was in a motor vehicle accident in which I
7 injured my spine, and as a result of that I was
8 unable to travel, you know, and let alone sit for
9 more than like 15 minutes at a time and --

10 THE COURT: Where were you travelling?

11 MS. MC DONALD: Actually, Lake Forest, down to
12 Indiana. I was on Route 41, and I believe it was
13 Warren County; and my counsel, Mr. O'Kelly at the
14 time, did notify Mr. Kinnally's office, and that was
15 a matter of discussion as well at my last deposition
16 that I had in Mr. Kinnally's office, where I did give
17 Mr. O'Kelly, my counsel, a copy of the accident
18 report and the medical report.

19 THE COURT: Okay. So I'm just asking about the
20 difficulty of traveling back and forth to Illinois.

21 MS. MC DONALD: Yes.

22 THE COURT: Where were you trying to travel from,
23 back and forth to Illinois?

24 MS. MC DONALD: Because I'm doing what is known

1 as a BAYR, which is a combined study in residence, it
2 depends on -- sometimes I'm in Minneapolis, sometimes
3 I'm in Massachusetts, sometimes I'm -- and I've also
4 been going out to Arizona, because recently I've put
5 my father in hospice because my father is at the end
6 stages of his -- he has advanced Parkinson's, and he
7 took a fall in April and he's gotten progressively
8 worse, and we had to place him in a facility.

9 And my mother also has -- her cancer has
10 returned, and so I have been going to Arizona, back
11 and forth, and in between my education as well. I'm
12 a doctoral student, so like I said, I do these
13 four-week stints at different places.

14 THE COURT: All right. So --

15 MS. MC DONALD: Which I actually had to miss some
16 of those because of my injury as well.

17 THE COURT: Okay. And you -- your motion also
18 contemplates that you need -- you need a little bit
19 of time to -- there's a -- for instance, there's a
20 motion in limine filed by you, and Shawn McDonald has
21 filed a response and it's ready to go. You said that
22 you understood it's ready to go, but you are not
23 ready to go this morning. Why? Why and how long do
24 you need, if you're asking for time?

1 MS. MC DONALD: A week.

2 THE COURT: Okay. And that's to just prepare
3 yourself to argue it?

4 MS. MC DONALD: Yes, sir.

5 THE COURT: Okay. Are you prepared to argue
6 anything else, like the motion to approve attorney
7 representation agreement, Shawn Mc Donald's motion,
8 or Shawn Mc Donald's motion for judicial notice, or
9 do you want that same week to prepare for all of
10 them?

11 MS. MC DONALD: I would prefer to have the same
12 week to prepare for all of those.

13 THE COURT: And you're aware that there's a trial
14 set on this in November?

15 MS. MC DONALD: I am.

16 THE COURT: A bench trial, and is that
17 November 18th?

18 MR. KINNALLY: It is.

19 MS. MC DONALD: Yes.

20 THE COURT: And are you still thinking you'll be
21 prepared to go to trial on November 18th?

22 MS. MC DONALD: Can I ask a question first before
23 I answer that?

24 THE COURT: Go ahead.

1 MS. MC DONALD: Um, these motions, for example,
2 the motion in limine, is that considered a pretrial
3 motion and are there rules about how soon, up and to
4 the date of trial, that they can be filing these
5 motions, because we're less than --

6 THE COURT: It's your motion in limine; right?

7 MS. MC DONALD: Yes. There was one that we filed
8 in September, that is correct, and Mr. Kinnally
9 responded in a timely manner.

10 THE COURT: Well, yeah.

11 MS. MC DONALD: And then I found --

12 THE COURT: We have to take care of those
13 motions, pretrial motions, before we get to the trial
14 date, yes.

15 MS. MC DONALD: But is there a deadline that they
16 needed to be in by, for example, like, you know, how
17 we had a deadline for deposing witnesses?

18 THE COURT: There's probably a deadline for
19 dispositive motions before a trial of 60 days,
20 according to local rule.

21 MS. MC DONALD: Yes.

22 THE COURT: But these aren't dispositive. These
23 are regarding the trial and -- or, they're not --
24 otherwise not dispositive of anything, any issues;

1 but they have a motion to approve attorney
2 representation agreement that might have a time limit
3 on it, for instance. That doesn't have anything to
4 do with a trial.

5 MS. MC DONALD: We are still within the time
6 limit that they would need to file for representation
7 for that particular -- I'm mindful of Mr. Kinnally's
8 wanting to represent Norman for the -- in that other
9 matter.

10 THE COURT: Okay.

11 MR. KINNALLY: Judge, I don't know who Norman is.

12 MS. MC DONALD: Oh, I'm sorry. Shawn. John
13 always referred -- sorry.

14 THE COURT: All right. So, all right. Is that
15 all you wanted to say in support of your motion to
16 continue --

17 MS. MC DONALD: At this --

18 THE COURT: -- today's hearing?

19 MS. MC DONALD: Yes, sir.

20 THE COURT: Any response, Mr. Kinnally?

21 MR. KINNALLY: Yes. Judge, you entered an order
22 on September 18th, which I have a copy of here, and a
23 couple of things.

24 First of all, she has not shown good cause,

1 because I took her deposition on August 29th. The
2 motor vehicle accident that she was involved in was
3 July 19th. I took her deposition at my office. It
4 lasted approximately three hours.

5 There's no documentation here to support any
6 of the statements that she has made to you, and in
7 fact if anything, what she's told you is that she's
8 traveled extensively since August, either to Arizona
9 or in pursuit of some BAYR document that she seeks to
10 obtain.

11 So the order is quite clear. The order
12 doesn't say that the matter is continued for status.
13 It says it's continued to today's date for ruling.
14 So they've had more than enough time to respond to
15 this representation agreement, which is a benefit to
16 the estate. The statute of limitations is running on
17 that. I filed that over a month and a half ago. The
18 other motions have all been pending.

19 There's no reason to continue this. We're
20 within 45 days, if not less, of a trial date, and I
21 just want to remind the Court, which I know you are
22 familiar with, this is not the first time this case
23 has been continued. It was continued last November,
24 when she had counsel; and when we came to do the

1 trial at that time, they withdrew their petition
2 for --

3 MS. MC DONALD: Mm-hmm.

4 MR. KINNALLY: To be the administrator. So this
5 is a pretty simple case at this time. It's an
6 heirship proceeding. There's been no other pleadings
7 before the Court with respect to -- other than that
8 issue, and we're ready to go ahead. Thank you.

9 THE COURT: Just to clarify, what is the bench
10 trial -- what are the pleadings that will be
11 considered at the bench trial? What is standing, I
12 mean, as far as what do I look at as the complaint
13 and answer in the, what you call an heirship
14 proceeding?

15 MR. KINNALLY: That's the proceedings before the
16 Court, is whether or not she's an heir.

17 THE COURT: And so there's a petition for Shawn
18 to be --

19 MR. KINNALLY: Shawn's already the administrator.

20 THE COURT: All right. Shawn is the
21 administrator. So there's no competing petition for
22 administration of --

23 MR. KINNALLY: Not that's --

24 MS. MC DONALD: Yes.

1 MR. KINNALLY: Not that's been pursued, that I'm
2 aware of.

3 THE COURT: And it has to do with the validity of
4 the marriage?

5 MR. KINNALLY: Exactly right.

6 THE COURT: All right. Well, then, I mean, we've
7 got -- is there other motions that I'm supposed to be
8 listening here to, besides what you have in your list
9 of four things we're talking about today?

10 MR. KINNALLY: No. That's all I have. I put
11 that in a letter to you at some point. I think I
12 listed them. Those are the only ones that I'm aware
13 of, Judge.

14 MS. MC DONALD: That's not true.

15 THE COURT: All right. All right. Well, on
16 the -- I'll give you a chance to reply to anything on
17 the motion, on your oral motion to continue. Do you
18 want to say anything further in reply?

19 MS. MC DONALD: Yes, sir. We are challenging the
20 heirship because it was obtained due to a fraud on
21 the Court; and the administration has -- and also the
22 administration is supposed to be supervised and it
23 has not been adhered to as supervised. In fact,
24 Mr. Kinnally's client has continued to raid the

1 estate and act outside the court order. We did issue
2 a challenge to that.

3 And to clarify, yes, there were many -- I
4 did go to the deposition. It was discussed in my
5 deposition, the documents that I had already
6 previously handed over to my attorneys about my
7 injury. Subsequent to that deposition, because I
8 traveled against doctor's orders, I re-injured
9 myself, and that's when I was no longer able to
10 travel, and that's what I am saying. I have missed
11 as a result of that. It's interfered with the travel
12 that I should have been required to do.

13 THE COURT: So you had doctor's orders that you
14 weren't supposed to go to the deposition?

15 MS. MC DONALD: He verbally told me that he did
16 not want me to travel in any way, shape, form, or
17 manner, that he needed me to rest, to wear the brace,
18 and of course I didn't abide by those. I went ahead
19 and, two days later, traveled up here because we had
20 already postponed the depositions to my --

21 You think it's funny?

22 MR. KINNALLY: I wasn't laughing, ma'am. I was
23 just smiling.

24 THE COURT: Ma'am, continue. So you traveled

1 from Arizona to --

2 MS. MC DONALD: No. At that time I was in
3 California, and I came -- went through Arizona and I
4 made my way to Illinois, back to Illinois, and went
5 straight to their office, actually, and then that day
6 went downstate because I was not able to go on to my
7 next destination because I actually re-injured
8 myself.

9 THE COURT: Anything further?

10 MS. MC DONALD: And also, it was a -- according
11 to what I've been told, it was a status hearing today
12 about me getting counsel.

13 THE COURT: Did you get a copy of the order of
14 withdrawal from your attorney?

15 MS. MC DONALD: Yes, sir, I did, and at the
16 bottom I believe it says status, unless I've read it
17 inaccurately.

18 THE COURT: And status of counsel.

19 MS. MC DONALD: Yes, sir.

20 THE COURT: All right. Well, we've already
21 resolved that. You don't have counsel, and you're
22 going to represent yourself.

23 MS. MC DONALD: Yes.

24 THE COURT: And your appearance is on file, so

1 you're taking over the case and it's up for hearing
2 and a ruling today; and so having heard the motion to
3 continue and not finding good cause for continuing
4 what's up today, your motion to continue is denied.

5 So have a seat. I will address your motion,
6 and you can take a look and review your motion in
7 limine, and Shawn Mc Donald's response and the other
8 motions that are up that you have copies of.

9 MS. MC DONALD: I only have that one motion, a
10 copy of that one motion, sir.

11 THE COURT: Your own motion in limine?

12 MS. MC DONALD: Yes. I have a copy of that, and
13 I have Mr. Kinnally's response. Other than that, I
14 have no other copies of anything.

15 THE COURT: All right. Well, we'll see if you
16 can have -- here's the other motions, copies of them,
17 and we'll take -- we'll call the case again in about
18 15 minutes to a half an hour. So you can review
19 those, and if you have anything to say in response to
20 those, I will allow it. Thank you.

21 (The case was passed and later
22 recalled, and the following
23 further proceedings were had:)

24 THE COURT: Okay. Let's meet again on the

1 Mc Donald Estate.

2 Okay. So we're going to start hearing these
3 motions that are pending. The motion for judicial
4 notice filed on 8/23/19, that's Shawn Mc Donald's
5 motion.

6 MR. KINNALLY: And I gave you everything you need
7 to know about it.

8 THE COURT: I lent it out to Miss Mc Donald.

9 MS. MC DONALD: Oh.

10 MR. KINNALLY: Okay.

11 THE COURT: But go ahead. I have read it.

12 MR. KINNALLY: It's a record from the State of
13 New York; take judicial notice of a record from the
14 State of New York. It's a record from the Criminal
15 Court of the City of New York. It's certified by the
16 clerk of the court.

17 Under the case law that I provided you, you
18 have the authority to take judicial notice of records
19 from other states, and that's what I'm asking you to
20 do.

21 THE COURT: You're asking me, in advance of
22 trial, that you will be asking that at trial?

23 MR. KINNALLY: No. I want it to come into
24 evidence now.

1 MS. MC DONALD: No.

2 MR. KINNALLY: I have the original. I can bring
3 it to court. That's a copy.

4 THE COURT: So you're not really asserting this
5 for the trial purposes, for me to take judicial
6 notice at trial before I make -- or, as part of your
7 case in chief.

8 MR. KINNALLY: Well, my understanding is you can
9 take judicial notice of a record of a state court, a
10 sister court of the United States, at any time,
11 either before trial or at trial. I wanted to alert
12 the Court that I intend to do that with the original
13 record that I have at my office, certified by the
14 circuit clerk for the state trial court in New York
15 City.

16 THE COURT: Okay. And the evidentiary or the
17 Illinois Rule of Evidence that's applicable to this,
18 do you recall?

19 MR. KINNALLY: 201.

20 THE COURT: 201. Okay. 2.01?

21 MR. KINNALLY: I think it's 2 -- yeah, I think it
22 is, Judge. The Illinois Rule of Evidence 201.

23 THE COURT: All right. Response, Miss Mc Donald?

24 MS. MC DONALD: First of all, I don't think it

1 should be let in because they have exceeded the
2 number of judicial notices that they have asked the
3 Court to be apprised of. I think we're up to,
4 something like close to 60 or 70 judicial notices
5 that they've attempted to put before the Court.

6 Second, this is not an accurate reflection
7 of that case and what took place. It's not a full
8 and accurate copy, and therefore it's misleading as
9 to the voracity of -- so I ask -- and also, this is a
10 case that has already been adjudicated and in fact
11 was dismissed on its merits.

12 So I'm asking that it be not allowed. It
13 has no bearing on my heirship or my being married to
14 my husband.

15 THE COURT: Reply?

16 MR. KINNALLY: It's a certified record from the
17 clerk of the court, Judge. Whether it's relevant or
18 not is a different issue. The question is whether
19 there's foundation for its admissibility. The rule
20 provides for a foundation for its admissibility, and
21 you have the right to take judicial notice of these
22 records at any time during a proceeding; Illinois
23 Rule of Evidence 201.

24 THE COURT: Any response to the 60 or 70 judicial

1 notices?

2 MR. KINNALLY: That's just untrue. If you look
3 at the record, probably 4 or 5, not 60 or 70.

4 MS. MC DONALD: We have --

5 THE COURT: Just slow down.

6 MS. MC DONALD: I'm sorry. I didn't mean to step
7 on your words there.

8 THE COURT: We do motion, response, and reply.

9 MR. KINNALLY: And there's no -- we haven't filed
10 60 notices.

11 THE COURT: The question on this, is this the
12 full, as far as you know, what was requested?

13 MR. KINNALLY: That's the court record. It took
14 me a year to get it. I hired a lawyer in New York to
15 obtain it.

16 THE COURT: So this is -- and it's disposed of?

17 MR. KINNALLY: That's it. It's the entire record
18 that was sent to me by the circuit clerk of the state
19 court in New York where that proceeding took place.

20 THE COURT: It is Rule 201, not 2.01.

21 MR. KINNALLY: Right.

22 THE COURT: Okay. 201 says that the rule governs
23 only judicial notice of adjudicative facts.

24 Time of taking judicial notice,

1 Subsection(f) -- Subparagraph (f): Judicial notice
2 may be taken at any stage of the proceeding. In a
3 civil action or proceeding, the court shall inform
4 the jury to accept as conclusive any fact judicially
5 noticed.

6 And in the commentary to 201(a), there are
7 also references to -- for statutory procedures for
8 admitting court, municipal, corporate and land office
9 records and patents for land, state patents, and
10 state and land sales. See 735 ILCS 5/8-1201 to 1211.

11 Also, see specifically Section 8-1003 of the
12 Code of Civil Procedure, which addresses both
13 legislative facts and common law. Every court of
14 this State shall take judicial notice of the common
15 law and statutes of every state, territory, and other
16 jurisdiction of the United States.

17 Also, there are subparagraphs regarding when
18 this -- when judicial notice is discretionary, and
19 that is when the court may take judicial notice, even
20 if not requested by a party; and when it's mandatory,
21 the court shall take judicial notice if requested by
22 a party and supplied with the necessary information.

23 So I am going to take judicial notice of
24 this document, subject to ruling at trial on whether

1 or not -- or, what adjudicative facts are attempted
2 to be proven at trial, and subject to possibly other
3 statutory procedures as I noted for admitting -- in
4 the Code of Civil Procedure for admitting the court
5 records of another state or the common law of another
6 state, or statutes or other facts, so if those -- if
7 there's other procedures necessary to further
8 validate this.

9 But I am taking judicial notice of the five-
10 or six-page document that is represented to be the
11 court record of the State of New York.

12 MR. KINNALLY: Okay. Thank you, Judge.

13 THE COURT: I don't know what adjudicative facts,
14 other than that there is a document that purports to
15 be the entire record of the case in New York.

16 Miss McDonald still has the opportunity to
17 bring other evidence or contrary evidence at trial,
18 if there is other evidence or contrary evidence on
19 that particular matter at trial, as part of her own
20 case in chief; but I assume that you will attempt --
21 that the -- Shawn Mc Donald will attempt to present
22 that document, and then again reconfirm that the
23 judge or the court at the bench trial has taken
24 judicial notice of that document.

1 And as to any other adjudicative facts
2 contained in that document, I think we'll still have
3 the -- all the rules of evidence will apply as to
4 whether something is relevant, which we haven't
5 determined yet on relevance, whether this is relevant
6 to the validity of the marriage, or something like
7 that. That's all still to be determined at trial;
8 but pursuant to the Rule 201, I'm taking judicial
9 notice, as I think it says it's mandatory and can be
10 done at any time.

11 MR. KINNALLY: Okay.

12 THE COURT: All right. Next motion.

13 MR. KINNALLY: Representation agreement.

14 THE COURT: Representation agreement.

15 MR. KINNALLY: So this is a motion that we filed
16 over a month ago, and the -- you had entered a
17 previous order, which is attached to the motion as
18 Exhibit A.

19 THE COURT: As to investigation --

20 MR. KINNALLY: Yes.

21 THE COURT: -- of the case?

22 MR. KINNALLY: That, we did, and Sean
23 Mc Donald signed a representation agreement on the
24 30th of July. We've done some initial investigation

1 with respect to two areas. One was the emergency
2 room physician, which is, I believe, dispositive. We
3 still don't have an expert on that. As to the
4 psychiatrist expert, we don't have a report. I
5 believe that we can get one pretty quickly.

6 So the statute is running. There's no
7 reason not to at least follow up on this, investigate
8 it further, file a lawsuit, and it's going to benefit
9 the estate; so we ask you to approve that.

10 THE COURT: Was there a response filed to your
11 motion?

12 MR. KINNALLY: No. In fact when I talked with
13 Mr. Lutrey before he withdraw for the second time, he
14 told me he had no objection to it.

15 THE COURT: And when did the statute of
16 limitations begin?

17 MR. KINNALLY: Date of death, so it's December.

18 MS. GOSSELIN: December 11, 2019.

19 MS. MC DONALD: December 11th, but they don't
20 have standing because that's not been determined.

21 THE COURT: We're not to your response yet, so
22 just a second. December 11th --

23 MR. KINNALLY: This year.

24 MS. GOSSELIN: 2019.

1 THE COURT: 2018, he died?

2 MS. MC DONALD: 2017.

3 THE COURT: So if it's a two-year statute of
4 limitations, 12/11/19; right?

5 MR. KINNALLY: Yes, sir.

6 THE COURT: Okay. You may respond.

7 MS. MC DONALD: At the time, we didn't object
8 when Mr. Kinnally first brought this before the
9 Court, with the understanding that the subjects of
10 their investigation would not be other parties; and
11 that was agreed upon.

12 In addition to that we felt the issue is, is
13 that Shawn, it has not been determined that he has
14 legal standing because, again, this plays to the case
15 where Shawn filed for letters of office, not
16 following appropriate procedure, and therefore it's
17 not clear that he should be the administrator of the
18 estate, and therefore he wouldn't be in a position to
19 have standing to be acting on behalf of my husband to
20 pursue or move against any other parties.

21 So before that can be done, we need to
22 adjudicate this case in terms of heirship and who
23 would be appointed to be the administrator. And
24 again, I apologize that I don't have the legal --

1 it's just it's putting the cart before the horse,
2 saying that it's assuming that Norman has the right
3 to just take over.

4 THE COURT: You mean Shawn?

5 MS. MC DONALD: Shawn. Shawn. I beg your
6 pardon, sir. Sorry.

7 MR. KINNALLY: May we reply, Judge?

8 THE COURT: If she's done, you may.

9 MR. KINNALLY: My client is the administrator.
10 There has been no petition to remove him as the
11 administrator. He has been acting as the
12 administrator in a supervised capacity.

13 We filed accountings with the Court after
14 they asked for supervised administration. You
15 approved that accounting almost a year ago in April,
16 and so he clearly has standing to bring this.
17 There's no reason not to pursue it, and for them to
18 come in and say that we don't have standing is not
19 true, because they have never petitioned to remove
20 him, and until they do, he's the administrator of the
21 estate.

22 He settled claims with respect to a car,
23 that you authorized, and he has also filed the
24 accounting that we requested that he do that. So

1 he's clearly got standing, and we want to move
2 forward with representing the administrator to
3 initiate a legal action against the hospital where
4 the decedent was refused admission, was not admitted,
5 in Paris, Illinois. Thank you.

6 MS. MC DONALD: I have a question.

7 THE COURT: So -- and the request to serve as
8 attorneys is the same firm that you are serving as
9 the attorneys for the administrator?

10 MR. KINNALLY: Yes. Flaherty is one. He does a
11 lot of medical negligence cases. He's qualified to
12 do it.

13 THE COURT: It hasn't been raised, but is there
14 any conflict at this point, or potential conflict?

15 MR. KINNALLY: I don't know of any conflicts,
16 since I represent the administrator. I don't see any
17 conflict whatsoever. He's the administrator of the
18 decedent's estate.

19 THE COURT: Shawn is?

20 MR. KINNALLY: Yes, sir.

21 MS. MC DONALD: No, he is not.

22 THE COURT: Well --

23 MS. MC DONALD: And just because you say it's so,
24 doesn't make it so. He obtained those letters

1 fraudulently. You're mindful of this, sir.

2 MR. KINNALLY: Could you have her address you as
3 opposed to addressing me?

4 THE COURT: Yes. You will do that.

5 MR. KINNALLY: Thank you.

6 MS. MC DONALD: Okay.

7 THE COURT: So from my experience with the file
8 and my reviewing the file numerous times in the last
9 two years, Shawn is still the administrator, and I
10 don't think that there's any petition to revoke
11 that --

12 MS. MC DONALD: There was.

13 THE COURT: -- administrator.

14 MS. MC DONALD: Yes, there is.

15 THE COURT: And so as -- in view of the time
16 constraints here, I think that Shawn has to -- has an
17 obligation to the estate to hire an attorney to
18 finish the investigation and possibly file a
19 complaint, and the attorneys, my only hesitation
20 would be that it's the same attorney firm; but if
21 there is -- if there are conflicts or if they do
22 arise for some reason, the firm is subject to the
23 ethical rules of Illinois, professional conduct
24 rules, and would be required to withdraw.

1 So at this point, I don't see any problems
2 if a single or solo attorney was doing the estate for
3 the administrator and the -- that solo attorney also
4 needed to review, investigate, and possibly file a
5 medical malpractice case within that two-year statute
6 of limitations. There are things that need to be
7 done quickly, such as get an expert on the standard
8 of care that might be applicable to the case, so that
9 is granted.

10 Okay. Ellizzette's motion in limine.

11 MS. MC DONALD: Can I ask a question about that
12 other motion we just discussed?

13 THE COURT: Go ahead.

14 MS. MC DONALD: Am I able to respond to that in
15 writing, your ruling, because there's a few things
16 that --

17 THE COURT: You can make -- you can bring another
18 motion if you want, a motion to reconsider. Those
19 are sometimes entertained here, so -- but that's the
20 ruling for now and they have to start their
21 representation, because they're up against the clock.

22 MS. MC DONALD: So am I, right? I'm up against
23 the same clock, your Honor.

24 THE COURT: All right. Well --

1 MS. MC DONALD: Am I wrong?

2 THE COURT: You're the spouse. You might have an
3 action. I don't know. The estate is saying that the
4 estate has an action. You're the purported spouse, I
5 should say.

6 MS. MC DONALD: I am the spouse.

7 THE COURT: That's subject to whatever case we're
8 having a bench trial on on November 18th; right? You
9 understand that, or you're mindful of that?

10 MS. MC DONALD: I'm mindful of their allegation,
11 yes, sir.

12 THE COURT: All right. Next is the motion in
13 limine. That's for either argument or ruling or
14 both. As far as -- unless you want to say anything,
15 for some reason, supplementing this, I have read the
16 motion and the response and I could rule on this.

17 You want to say anything further?

18 MS. MC DONALD: My con -- well, in regard to
19 their legal expert, my -- I don't know how they can
20 bring in a legal expert, because wouldn't that be
21 usurping the authority of yourself, I mean, so I
22 would think that would be something to be dealt with
23 at the appellate level. So in regard to their
24 expert, I don't think that that should be allowed and

1 that he should be eliminated.

2 In regard to the judge, it's almost as
3 though they're trying to relitigate a case that was
4 also -- my husband did not receive due process. He
5 was found -- this whole thing was dealt with without
6 his presence. He was given inaccurate information.
7 It was filed as an act of revenge. My understanding
8 is that a court is supposed to eliminate wrongdoing
9 and prevent further harm.

10 This entire guardianship case was taken out
11 of an act of revenge and animus because he was --
12 because the brother was aware that my husband was
13 starting to speak to authorities, as well as his own
14 doctors, about the abuses and things he had sustained
15 growing up, and also because of the money that was
16 owed to him on numerous occasions.

17 I have a question, too. When we were
18 downstairs before the honorable judge, on numerous
19 occasions opposing counsel made definitive false and
20 misleading statements about my husband, claiming that
21 he had lost his medical license, that he was not
22 allowed to work, none of which were true. My husband
23 was working. He had never lost his license to
24 practice medicine.

1 He was capable and continued to function in
2 that high-level capacity, but yet repetitively, to
3 use his words, he was humiliated and degraded and he
4 was not given the opportunity, and he was looking
5 forward to the day that he could tell his story.
6 That's all I have to say, your Honor.

7 THE COURT: Mr. Kinnally?

8 MR. KINNALLY: Yeah, Judge. I think we've laid
9 this out pretty well in the response we filed. The
10 issue here is whether or not the decedent had
11 sufficient mental capacity to enter into a contract,
12 not whether he had the capacity to -- did he have the
13 mental capacity, based on the record evidence; and
14 whether or not it's the ultimate issue in the case is
15 not a basis for an objection. It's clear under the
16 rule that experts can offer their opinions on the
17 ultimate issue in the case.

18 In this particular case, the basis for
19 Mr. Parsons to appear, the belief that the decedent
20 lacked mental capacity was based on the records, and
21 I'm going to offer that as an opinion. He's entitled
22 to give that opinion. He's qualified as an expert,
23 which he is, and --

24 MS. MC DONALD: He's not qualified as a

1 medical --

2 MR. KINNALLY: Please don't talk to me. Talk to
3 the Judge.

4 The issue in this case is going to be
5 whether under the Probate Act there has to be a
6 hearing conducted by your Honor, or a circuit judge,
7 to determine whether a person lacking mental capacity
8 in his entirety has the ability to enter into a
9 contract -- in this case a marriage -- and the
10 statute clearly says that hearing has to be conducted
11 prior to that event happening.

12 You know from the Karbin case from the
13 Illinois Supreme Court, which was codified into that
14 statute, this is required because the court then must
15 make a determination as to whether it's in the best
16 interests of the ward to be married; and if the court
17 finds the best-interests standard to have been met,
18 it issues an order to the county clerk in where that
19 marriage supposedly takes place and authorizes the
20 county clerk to issue a license to marry. If that
21 doesn't happen, then there is no valid marriage.

22 That's what the Probate Act is. You may not
23 like it; Miss McDonald may not like it. That's what
24 the law is.

1 And in this particular case, Mr. -- or,
2 Attorney Parsons is going to testify with respect to
3 the capacity of the decedent, based on the records
4 that were before the Court, Judge Noverini, which
5 included medical reports, included the order entered
6 by Judge Noverini, and also other reports from the
7 guardian ad litem. In addition, I believe he will
8 testify with respect to a different provision of the
9 Probate Act that says a ward cannot enter into a
10 contract, and if he does, the contract is void.

11 So those two bases have been disclosed, as
12 required under Supreme Court Rule 213, and they are
13 not objectionable because they go to the ultimate
14 issue. And we cited to you, and I believe gave you a
15 copy of, Illinois Evidence by Cleary on this
16 particular topic, and that is Pages 823 and
17 subsequent. If you don't have it, I would be happy
18 to leave you a copy. I made a copy before I came to
19 court today.

20 So we believe that the opinion is valuable
21 because it aids the court in this case who's sitting,
22 much like a jury -- there is no jury -- in reaching
23 the decision in this particular matter, and that's
24 the test. If the opinion is one that helps the court

1 make a decision, then it's admissible. And that is
2 my argument. Thank you.

3 THE COURT: If it's otherwise admissible.

4 MR. KINNALLY: Right.

5 THE COURT: It's not objectionable.

6 MR. KINNALLY: Right.

7 THE COURT: Um, all right.

8 MR. KINNALLY: And you have our response, right,
9 Judge?

10 THE COURT: I do.

11 MR. KINNALLY: Okay. Thank you.

12 THE COURT: Yes. In fact, its attachments, but
13 it does not have the 704 Cleary section.

14 MR. KINNALLY: Well, you got it now.

15 THE COURT: I have it now. It has a lot of other
16 attachments.

17 MR. KINNALLY: Right.

18 THE COURT: As to Attorney Parsons being a
19 purported expert on probate matters, I am not sure,
20 from even reading the motion and the response, what
21 the ultimate issue is going to be in this case, and I
22 don't really need a statutory interpretation from
23 Mr. Parsons. However, he may have some expertise on
24 something else that is relevant in this case, so I'm

1 not going to totally bar him, but I will take his --
2 take the motion and the response and Rule 704 with
3 the case.

4 MR. KINNALLY: Okay.

5 THE COURT: And we will treat that as an
6 evidentiary matter that may still be objectionable
7 for other objectionable reasons, or other
8 non-admissibility reasons or non-relevance, or
9 whatever, and on the 704 non-applicability, possibly.
10 So I'm going to take that with the case.

11 As to Judge Noverini, there was no response
12 to that, so I assumed that there is -- that that's
13 not going forward, as far as subpoenaing Judge
14 Noverini to testify.

15 MR. KINNALLY: Well, I already subpoenaed him,
16 but I'm not going to call him.

17 THE COURT: All right. Well, I think there has
18 to be some other hearing.

19 MR. KINNALLY: There does. There does. I talked
20 to the chief judge about it and I told her I wasn't
21 going to call him.

22 THE COURT: Well, I think the chief judge sent a
23 letter to all parties --

24 MR. KINNALLY: She did.

1 THE COURT: -- in that regard.

2 MR. KINNALLY: Yeah.

3 THE COURT: So Noverini, I don't have to rule on
4 this, to bar the calling of him, because counsel has
5 withdrawn that request to ask for Judge Noverini's
6 testimony. It's a file in the court. I think we
7 previously have taken judicial notice of the file, or
8 it's consolidated with this case.

9 MR. KINNALLY: Consolidated now, Judge.

10 THE COURT: Part of this case.

11 MS. MC DONALD: Well --

12 THE COURT: And we'll hear all your evidence in
13 opposition to whatever facts are trying to be
14 presented by virtue of saying, here's the
15 guardianship, here's what happened, here's what the
16 findings were. If you want to bring in other
17 evidence, you certainly may be entitled to that.

18 And as far as Robert (Bud) See, nobody said
19 anything about (Bud) See, Robert (Bud) See, another
20 witness, but I agree with the response of Shawn that
21 it's not him that prevented (Bud) See from testifying
22 at a deposition; so they're still entitled to
23 subpoena him to testify at trial.

24 And if he follows what his usual procedure

1 is, has been, he may ignore that subpoena as well. I
2 don't know, but it's not -- shouldn't penalize Shawn
3 from bringing a witness that he wants to bring --

4 MS. MC DONALD: He --

5 THE COURT: -- or subpoenaing a witness that he
6 wants to have testify.

7 MS. MC DONALD: Mr. See has stated that he's been
8 bullied by Shawn and that he's in fear.

9 THE COURT: Well, that's not part of this.

10 MS. MC DONALD: Okay.

11 THE COURT: That's his own motion if he wants to
12 do something like that.

13 MS. MC DONALD: Okay.

14 THE COURT: But as far as the motion in limine
15 that uses that as the basis that Robert (Bud) See never
16 showed up for his deposition or refused to, that
17 is -- there's nothing in here that says that Shawn
18 caused that.

19 MS. MC DONALD: Correct. I concur.

20 THE COURT: All right. So that takes care of our
21 motions this morning. Do we want to --

22 MR. KINNALLY: No, no, no. I have a motion in
23 limine.

24 THE COURT: Oh, you do?

1 MR. KINNALLY: I do.

2 THE COURT: All right.

3 MR. KINNALLY: Which I filed on the 16th, which
4 you should have a copy of.

5 THE COURT: Hold on. Let me locate that. I
6 don't know if I -- unless you have a copy. I don't
7 know if I read it.

8 MR. KINNALLY: I don't know if you read it or
9 not. I filed it on the 16th. I know I gave you a
10 courtesy copy. I don't know if you received it.

11 THE COURT: Okay. So before we argue it, it's
12 asking that the Court bar Lisa Blades, aka,
13 Ellizzette Mc Donald, from testifying or presenting
14 any evidence to any marital relationship, if any, she
15 had with the decedent.

16 MS. MC DONALD: What?

17 THE COURT: You've seen that?

18 MS. MC DONALD: No.

19 THE COURT: Okay. Do you want to respond to it?
20 I mean, you haven't seen it at all; right?

21 MS. MC DONALD: No.

22 MR. KINNALLY: Well, we sent it to her address.
23 Actually, we sent it to two addresses. We sent it to
24 Lakewood Drive, in Paris, Illinois, and we also sent

1 it to an address in Walnut, California, which is the
2 address she put down on the appearance that she filed
3 today.

4 MS. MC DONALD: Right.

5 MR. KINNALLY: We also sent it to an e-mail
6 address that was listed previously with respect to
7 ellizzette@neorestoration.org.

8 MS. MC DONALD: That's correct.

9 MR. KINNALLY: And it said, "postmaster confirm",
10 that our message had been delivered to the following
11 recipients, so I don't know why she didn't get it,
12 but...

13 THE COURT: Is it noticed up for this morning?

14 MR. KINNALLY: It is.

15 THE COURT: Okay. Do you want to respond or look
16 at it first, or respond in writing?

17 MS. MC DONALD: Yeah. First of all, my name is
18 Ellizzette Duvall Mc Donald. We have been through
19 this ad nauseam. Lisa is a short version from
20 Ellizzette, similar to Elizabeth. Lisa, Beth, Liza.
21 My name is Ellizzette.

22 THE COURT: So you know what he's asking for or
23 why?

24 MS. MC DONALD: He's trying to bar me from

1 testifying about my marriage to my husband now? It's
2 ridiculous. 30 years I was with that man.

3 THE COURT: Are you ready to argue the motion
4 this morning?

5 MS. MC DONALD: No, I'm not. No, I'm not, your
6 Honor.

7 THE COURT: All right. How much -- you're asking
8 for what, because I can't go very far out to get
9 this to get ready for trial. Obviously it's a
10 substantial motion, so you should be looking at it
11 and responding to it; and you say you haven't read it
12 yet?

13 MS. MC DONALD: How much time do I have?

14 And I would like to also let you know that
15 the 9 Lakewood Drive address, we've repeatedly told
16 him it's not a good address for me. My drop box in
17 California, the things go there and then it gets sent
18 to me.

19 THE COURT: Well, you put that on your
20 appearance; right? Walnut Creek, California.

21 MS. MC DONALD: Walnut, Illinois -- Walnut
22 California, yes, and that was a good address; and I
23 have not received the forwarding yet for that. I get
24 notified when there's so much mail, and then they

1 forward it to me, designated where I would like it to
2 go to.

3 So I haven't seen the mail for this week, if
4 it would have been coming in this week. I apologize.

5 THE COURT: Is that motion -- is there a lot of
6 attachments to that?

7 MR. KINNALLY: The only attachments are ones that
8 are already in the court record, other than the
9 purported marriage license, prior court order
10 indicating John Mc Donald, III, is totally without
11 capacity, and the case law that I cited -- copies of
12 the case law that I cited.

13 THE COURT: All right. Well, how long are you
14 here this week?

15 MS. MC DONALD: I was supposed to be here till
16 Wednesday. Not here. I'm leaving here today to go
17 into the City, and then tomorrow morning I'm going
18 downstate and then I'm going to Canada, actually,
19 because then it's -- this is the last week of my
20 term. For this particular term I have exams.

21 THE COURT: So when can you come back before
22 November 18th to argue this motion?

23 MS. MC DONALD: The first week in November. If
24 you would like to set it for Friday or Thursday?

1 THE COURT: Friday, November 8th?

2 MS. MC DONALD: I would do that if that --

3 MR. KINNALLY: I'm out of the office from the 7th
4 to the 14th, Judge.

5 MS. GOSSELIN: And I'm the lawyer in the lobby.

6 MR. KINNALLY: So I can do it the 6th or the 5th.

7 THE COURT: 6th or the 5th?

8 MS. MC DONALD: I have exams. 7th?

9 THE COURT: The 15th? The 1st?

10 MS. MC DONALD: The 15th, I can do. I'm not --
11 I'm completely open. That week, I'm -- the 15th,
12 I'm...

13 MR. KINNALLY: You want to do it on the 15th?

14 THE COURT: I don't know. As soon as we can,
15 prior to that November 18th.

16 MR. KINNALLY: I can do it the 1st.

17 MS. MC DONALD: I can't do the 1st.

18 MR. KINNALLY: I can do the 5th. I can do the
19 6th.

20 MS. MC DONALD: I have exams through -- 1 through
21 the 7th.

22 MR. KINNALLY: I can do the 31st, Halloween.

23 MS. MC DONALD: So we're looking at, if he's out
24 of the office until -- did he say the 8th until

1 the --

2 THE COURT: Till the 14th.

3 MS. MC DONALD: Can we do it the 15th in the
4 morning?

5 MR. KINNALLY: It's three days before the trial,
6 Judge.

7 THE COURT: I know. Let's go off the record and
8 get this scheduling done.

9 (A discussion was had off the
10 record between the Court and
11 parties, after which time the
12 proceedings resumed back on the
13 record as follows:)

14 THE COURT: Let's go back on the record.

15 MS. MC DONALD: I've been here when you required
16 me to be here, your Honor.

17 THE COURT: All right, but now we're on the eve
18 of trial and you're not able to be here --

19 MS. MC DONALD: I'm able to be here on the trial.

20 THE COURT: -- until the 15th.

21 MS. MC DONALD: No. I said I could be here on
22 the 8th, the 9th, the 10th, the 11th, the 12th, the
23 13th. All of those days.

24 THE COURT: You did?

1 MS. MC DONALD: Yes. Yes, sir.

2 THE COURT: Well, let's do it the 8th, then.

3 MR. KINNALLY: I'm out of town, Judge.

4 THE COURT: I'm sorry. That's right.

5 MR. KINNALLY: I'm out of town from the 7th --

6 MS. MC DONALD: That's what I --

7 THE COURT: Hold on.

8 MR. KINNALLY: Can I finish so I can inform the
9 Judge? I should be back on the 13th, in the office
10 on the 13th, I believe, which is five days prior to
11 the commencement of the trial.

12 THE COURT: Can you do it on the 13th?

13 MS. MC DONALD: Yes, sir.

14 THE COURT: All right. Let's do the 13th. That
15 gives us a couple of extra days. If you want to make
16 a written response to this motion, you have seven
17 days to do so, and that would be by October 30th; and
18 then I will -- I may rule before the 13th if you send
19 me a written response. Then you would at least know.

20 MR. KINNALLY: But for now, I'll put down 11/13.
21 What time, Judge?

22 THE COURT: At 10:30.

23 MR. KINNALLY: 10:30 on the 13th?

24 THE COURT: Correct.

1 MR. KINNALLY: Okay. Do you know if you have a
2 copy of mine? If you don't, I can get you another
3 one.

4 THE COURT: Yes, I do.

5 MR. KINNALLY: You do? Okay, great.

6 THE COURT: All right. And so then --

7 MR. KINNALLY: And I have the case law here if
8 you want it.

9 THE COURT: Sure. And you can file a response to
10 that if you wish, in writing. Otherwise, we'll see
11 you on the 13th.

12 MS. MC DONALD: File a response. Can I ask a
13 question?

14 THE COURT: Are you asking something on the
15 record?

16 MS. MC DONALD: Yes, sir.

17 THE COURT: What is it?

18 MS. MC DONALD: Quite honestly, I just didn't
19 remember for a minute. Um, oh. I just -- I
20 didn't -- if you could explain to me what you were
21 going to say about I'm an absentee litigant, because
22 I have been here when I'm required to be.

23 THE COURT: Well, we've had difficulty getting
24 everybody here all at the same time, and attorneys

1 withdrawing or attorneys being here and then giving
2 you notice, and we're -- I'm having difficulty now
3 getting a hearing scheduled.

4 It's your challenge to the case on the
5 validity of the marriage, et cetera; so it's your
6 litigation and you have to be here for it.

7 MS. MC DONALD: Right.

8 THE COURT: We have a trial scheduled. It's a
9 firm trial date and it's going to go because there's
10 witnesses; so I was asking whether you were going to
11 be involved in preparing your side of the trial,
12 because you had numerous travels and exams in the
13 next two or three weeks, and the trial is only 30
14 days away.

15 So I was asking whether it's realistic that
16 we have a November 18th trial date, and you said yes,
17 you want to get it done.

18 MS. MC DONALD: I didn't pick this fight, your
19 Honor, so I guess I'm misunderstanding. I did not
20 pick this fight. They picked the fight, starting
21 with my husband.

22 THE COURT: But you want to litigate it, right?
23 That's where it's at. You want to challenge whatever
24 they're saying.

1 MS. MC DONALD: I just don't want to be seen as
2 contentious. I'm not trying to be difficult. I want
3 justice for my husband.

4 THE COURT: All right. So that's -- I think I've
5 answered the question.

6 MS. MC DONALD: Okay. Yes, sir.

7 THE COURT: If you have any other questions, put
8 them in the form of a motion.

9 MS. MC DONALD: Thank you.

10 THE COURT: Or we'll answer them on the 13th, or
11 try. So that concludes the hearing for today.

12 MS. MC DONALD: Yes, sir.

13 THE COURT: Okay. Thank you.

14 MS. MC DONALD: Thank you.

15 MR. KINNALLY: I'll prepare an order.

16 THE COURT: Thanks.

17 (Which were all the proceedings had
18 at the hearing in the above cause,
19 this date.)
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF K A N E)

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I HEREBY CERTIFY that I reported in shorthand the proceedings had at the hearing in the above-entitled cause, and that the foregoing Report of Proceedings, consisting of Pages 1 to 46 inclusive, is a true, correct, and complete transcript of my shorthand notes so taken at the time and place hereinbefore set forth.

Mariann L. Busch

Official Court Reporter
Sixteenth Judicial Circuit of Illinois
Kane County.
Lic. No. 084-001837

Thomas M. Hartwell
Clerk of the Circuit Court
Kane County, Illinois

1/10/2020 1:55 PM

FILED/IMAGED

In the Matter Of:

IN THE MATTER OF THE ESTATE OF: JOHN W. MCDONALD, III

REPORT OF PROCEEDINGS

November 18, 2019

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1 PRESENT:

2 KINNALLY, FLAHERTY, KRENTZ, LORAN, HODGE
3 & MASUR, P.C., by
4 MR. PATRICK M. KINNALLY,
5 2114 Deerpath Road
6 Aurora, Illinois 60506
7 (630) 449-0804
8 pkinnally@kfkllaw.com

9 and

10 GOSSELIN LAW, P.C., by
11 MS. GABRIELLE A. GOSSELIN,
12 133 South Batavia Avenue
13 Batavia, Illinois 60510
14 (630) 879-1560
15 gabrielle.gosselin@sbcglobal.net
16 Appeared on behalf of Shawn Mc Donald;

17 ALSO PRESENT:

18 MS. ELLIZZETTE MC DONALD, Appeared Pro Se.

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I N D E X

WITNESS	Page	Line
DIANE BOYER		
Direct Examination by Ms. Mc Donald	34	15
VISAR BELEGU		
Direct Examination by Ms. Mc Donald	54	20
Cross-Examination by Mr. Kinnally	74	17
Redirect Examination by Ms. Mc Donald	79	16
RAY BEMENT		
Voir Dire Examination by Mr. Kinnally	89	9
Direct Examination by Ms. Mc Donald	96	23
Cross-Examination by Mr. Kinnally	119	7
Redirect Examination by Ms. Mc Donald	128	9

1 THE COURT: Estate of John Mc Donald, III.

2 MR. KINNALLY: Hi, Judge.

3 THE COURT: Good morning.

4 MR. KINNALLY: How are you?

5 THE COURT: Doing well, thank you.

6 MR. KINNALLY: This is Patrick Kinnally and
7 Gabrielle Gosselin for the Administrator, Shawn
8 Mc Donald. This comes on for trial today, Judge.

9 THE COURT: And that's a bench trial for the
10 petition of Ellizzette Mc Donald, I believe, is one
11 of the also-known-as names, and it's her petition to
12 be appointed as Administrator; correct?

13 MR. KINNALLY: Well, she abandoned that,
14 Judge, last time we were here on Thursday. Here's
15 the transcript.

16 THE COURT: Okay.

17 MR. KINNALLY: She said -- if I could file
18 that with the Court, she said she didn't want to be
19 the Administrator and she said a lot of things.

20 THE COURT: She wanted to be able to
21 designate who would be the Administrator as a
22 preference, is the way I translated what she said.

23 MR. KINNALLY: Okay. Well --

24 THE BAILIFF: Your Honor, Ms. Mc Donald is

1 here. She just isn't up in the courtroom yet.

2 THE COURT: All right. We'll pass it, then,
3 for a moment.

4 MR. KINNALLY: Okay.

5 (Recess taken.)

6 THE COURT: Okay. Re-calling John Mc Donald
7 estate.

8 MR. KINNALLY: Good morning, Judge. Patrick
9 Kinnally and Gabrielle Gosselin for Shawn Mc Donald,
10 who is present in court.

11 THE COURT: Okay. All right. We were just
12 starting to talk about 10 minutes ago about what is
13 happening this morning. And now Ms. Mc Donald is
14 here?

15 MS. MC DONALD: Yes, sir.

16 THE COURT: Ellizzette Mc Donald?

17 MS. MC DONALD: Yes, sir.

18 THE COURT: All right. Are you here ready
19 for trial?

20 MS. MC DONALD: No, sir.

21 THE COURT: Okay. That's what it's up for
22 today. What is your plan?

23 MS. MC DONALD: We filed a motion for
24 continuance due to the fact that yesterday my father

1 was given end of life, and he's in Arizona
2 hospitalized, and I need to go there. My mother was
3 also supposed to be one of the key witnesses in this
4 case, since both my parents were around my husband
5 for the last year of his life, and she's also
6 undergoing cancer treatment and is -- for her to
7 come here and testify at this time would be a bit,
8 well, arrogant of me, obviously, to ask her to leave
9 my father's bedside. We removed life-sustaining
10 support of my --

11 THE COURT: Hold on. Did you send -- when
12 did you file this motion?

13 MS. MC DONALD: We filed it yesterday evening
14 after I spoke to my father's doctor when I called.

15 THE COURT: Did you send it to counsel, to
16 the other side?

17 MS. MC DONALD: It was done electronically
18 where Mr. Kinnally's name is on the list.

19 THE COURT: All right. And do you have a
20 copy of the motion?

21 MS. MC DONALD: I don't, Your Honor, because
22 I just got right away to get here this morning.
23 I've come from out of state as well. We have all
24 come from out of state.

1 THE COURT: All right. Well, I received a
2 call Friday from one of the deputy clerks in the
3 clerk's office that you had called them, and she
4 relayed your message to me.

5 MS. MC DONALD: We were trying to find out
6 what we needed to do. That was the first time
7 Dr. Gonzalez called me and said my dad was going to
8 be put on end of life and that my mother had made
9 the decision to -- not to not withhold treatment but
10 to not take life-sustaining measures. And I said,
11 what do I do? In the case of my father expiring,
12 what should I do? Because the clerk was off that
13 day, Friday, and so we spoke to Vladimir.

14 THE COURT: The clerk was off?

15 MS. MC DONALD: I asked if you had a clerk;
16 and he said, no, that Paul was off on Friday; and
17 his answering machine even said he was going to be
18 here on Monday. So Vladimir said this is an unusual
19 circumstance, because asking for a hearing -- he
20 said we can schedule a hearing in December but the
21 date will have already passed or the trial will have
22 already supposed to have commenced today, so he was
23 trying aggressively, he tried very concertively to
24 try to help me.

1 And I said, what do I do in the
2 case of my dad's death? I said -- as you can
3 imagine, I just got off the phone with my father's
4 doctor and I -- and I said these decisions are being
5 made without me being present, because I had asked
6 my mother not to make these decisions until I got
7 back to Arizona. But, unfortunately, I think in
8 her --

9 THE COURT: So did you also talk to a Jill at
10 the clerk's office?

11 MS. MC DONALD: No, sir, I just spoke to
12 Vladimir. I remember his name because he
13 transferred me to Paul, because I got a message
14 machine saying he would be in on Monday.

15 So I called back and I got to
16 Vladimir again; and he said, you weren't able to
17 speak to Paul? And I said, no, and I was on hold.
18 And he came back and said, okay, I'll go ahead and
19 give you a December 3rd hearing date at 9:00 a.m.,
20 he said. And he was concerned about -- what was the
21 word he used -- because I said, what's that? I
22 forget.

23 Because I also had my assistant
24 call and for her to be checking, so it was like she

1 was on the phone and I was on the phone, because we
2 were trying to find out what the procedures were
3 under these exigent circumstances.

4 THE COURT: Your assistant was calling the
5 clerk's office?

6 MS. MC DONALD: My assistant.

7 THE COURT: Who is your assistant?

8 MS. MC DONALD: Rachel.

9 THE COURT: All right. Well --

10 MS. MC DONALD: I said, could you just help
11 me out?

12 THE COURT: For the record, I got a call from
13 the clerk's office that said that you had called
14 them and that you would not be here this morning
15 because your father had died.

16 MS. MC DONALD: No, I said I would be -- when
17 I spoke to Vladimir -- in fact, he can contest that
18 I said, look, I will come. And he said, at this
19 point -- I hate to say it, Ms. Mc Donald, but at
20 this point, yes, that's really the only option you
21 have, is to come and speak to the Judge. So I said,
22 I'll come, but I said, I'll just do what I have to
23 do, that I had already spoke to you before and let
24 you know that these are difficult times --

1 THE COURT: Hold on. Can the clerk print out
2 something? If it was accepted for filing, it should
3 be on there.

4 (Document printed.)

5 MS. MC DONALD: Sorry. Because
6 Mr. Vladimir --

7 THE COURT: Hold on.

8 MS. MC DONALD: As I stand here, when we were
9 coming in, my mother has been aggressively trying to
10 reach me but I'm choosing not to take the call right
11 now. And God forbid, because I'm here and she's
12 there, something has happened, there's not --

13 THE COURT: Okay. I have the motion.

14 So you're asking not only for a
15 continuance of today's date but you're asking for
16 leave to have your attorneys come back into the
17 case?

18 MS. MC DONALD: Yes, sir. I've cured my
19 indebtedness to them and there would be -- that
20 would give them the time to prepare to put together
21 the exhibit list and proceed with subpoenas for
22 witnesses. They withdrew exactly 60 days from the
23 date of trial, and, unfortunately, it was at that
24 point that we should have submitted those things to

1 Mr. Kinnally's office.

2 THE COURT: Things? What things?

3 MS. MC DONALD: Exhibits and witness lists.
4 Again, to make it equitable.

5 THE COURT: Okay. Response, Mr. Kinnally?

6 MR. KINNALLY: Well, first of all, this was
7 scheduled for next week, December 3rd, so it's not
8 scheduled for today. As a matter of procedure, we
9 normally would notice it up for today.

10 Second thing is, as the transcript
11 shows, which I filed with you this morning from last
12 Thursday, Ms. Mc Donald indicated that she would be
13 here today ready to proceed after you asked her
14 twice. I've outlined that toward the end of the
15 transcript, Judge. I can show you where it is.

16 And she indicated that she didn't
17 want to waste time, that she was abandoning her
18 claim of the Administrator, and the record indicates
19 that.

20 More importantly, Supreme Court
21 Rule 231 says that if you want a continuance on the
22 day of trial or close to it, then you should tell
23 the Court what the witnesses are going to say so the
24 Court can determine whether or not there is good

1 cause with respect to their absence.

2 So, in this case, she identifies
3 various witnesses, does not indicate what they're
4 going to say, does not indicate that they have any
5 testimony that relates to heirship, and, therefore,
6 they're not material. And since they're not
7 material, Supreme Court Rule 231 says that you
8 should not grant a motion for continuance on the day
9 set for hearing.

10 I want to remind the Court, this
11 isn't the first time this has happened. We were
12 ready for trial last, I believe, October or
13 November. At that time, Ms. Mc Donald was
14 represented by lawyers who have been in and out of
15 this case twice, and they are the ones who, at the
16 time that case was called for trial, said they were
17 not ready to go and abandoned their request at that
18 time.

19 So I've been on this file since
20 January of '18. I've taken 14 depositions to date.
21 I have engaged in tremendous discovery for my
22 client. Most of it was taking depositions of their
23 witnesses, none of whom are going to -- none of whom
24 are in the courtroom today other than Mr. Bement.

1 And since the proponent, Ms. Mc Donald, is not going
2 to testify in this case, based on your order of last
3 week, I don't see any reason why we shouldn't go
4 ahead, Judge. Thank you.

5 THE COURT: Anything further, Ms. Mc Donald?

6 MS. MC DONALD: Yes. Any of the
7 representations that Mr. Kinnally just made are
8 actually inaccurate, with all due respect, Your
9 Honor. I had no knowledge of how to proceed in this
10 situation; therefore, I followed the directive to
11 the best I could of Vladimir, and he did indicate
12 that this was a situation that I would need to come
13 here. As I said to you on Wednesday, I did, in
14 fact, indicate on Wednesday that I was not prepared
15 for trial.

16 THE COURT: You mean Thursday, November 13th?

17 MS. MC DONALD: Okay. I apologize.
18 Thursday. Thursday, November 13th. I indicated
19 that I was not prepared for trial but that I would,
20 in fact, not disrespect the Court and that I would
21 be here, you know, make every attempt to be here,
22 that I'm not just not going to show up.

23 That being said, I did indicate
24 that I wasn't prepared and that I had only just been

1 in touch with my counsel to re-enter.

2 Also, my witness list was submitted
3 60 days prior to trial, and with some particularity
4 the witness list does indicate what the witnesses
5 will be testifying to. They are material to the
6 case because, again, these were people that were
7 around my husband in the days and weeks leading up
8 to his death. They have intimate knowledge of his
9 life, in addition to that, and this heirship. My
10 attorneys only withdrew from the case one other time
11 when it was -- when I was in a similar situation, if
12 you recall, when my father -- when this downward
13 spiral started when my father fell and sustained his
14 traumatic brain injury in April.

15 And with no disrespect, I mean, I'm
16 mindful that there's case law about the procedures
17 and these sorts of things, but this is not my area
18 of expertise and this is out of my depth to be able
19 to know what the rules of the Court are in regard to
20 anything other than my being present, that I need to
21 be here since I'm one of the people captioned in
22 this case. And I would like the opportunity to have
23 representation who can respectfully represent my
24 husband's wishes and to continue on with the work

1 that they've already done. It is to no fault of
2 their own that I had a situation whereby I had
3 not -- that I hadn't put forward to be able to meet
4 my financial obligations to them, one that ended up
5 being -- I couldn't keep due to my own health event
6 when I was in the accident, which also -- that's a
7 whole other thing, but the reality is, is that I'm
8 not prepared today.

9 My counsel withdrew 60 days prior
10 to trial. I was not in the position because of my
11 own spine injuries and due to my motor vehicle
12 accident to put together exhibits and subpoena
13 witnesses and things of this nature.

14 Our witness list was submitted on
15 time. These people we would like to be able to
16 call. Mr. Rummerfield and Mr. Eric Westacott are
17 material to this case. They strongly wish to want
18 to testify. Unfortunately, the subpoenas that were
19 being issued to them by opposing counsel did not
20 meet the framework of the law in the state that they
21 reside.

22 Both of them are quadriplegics.
23 They wanted -- Mr. Westacott informed me a couple
24 weeks ago that there is -- there are laws that

1 require us to allow them to testify given their
2 disability. Of course he's an attorney, so I defer
3 to his expertise.

4 Again, I was pretty frazzled the
5 other day when I found this all out because my
6 mother was making decisions. As of this morning, I
7 haven't had a chance to look at it yet, but my
8 mother had forwarded to me -- I haven't printed it
9 out and looked at it -- a document from the hospital
10 regarding my father's health status; and my father's
11 primary care doctor, Dr. Gonzalez, is preparing a
12 note that, unfortunately, I didn't have at the time
13 of submitting this motion for continuance because I
14 only spoke to him yesterday afternoon. He said that
15 it was unreasonable for me to expect -- which I
16 knew -- my mother to leave my dad's bedside. I knew
17 that, Your Honor. I wouldn't ask my mother to do
18 that.

19 THE COURT: So what is your plan, to go to
20 Arizona today?

21 MS. MC DONALD: Yes, sir. Well, to go back
22 down to Midwest and get my things and head toward
23 Arizona, absolutely.

24 THE COURT: To where?

1 MS. MC DONALD: Arizona, yes, sir.

2 THE COURT: You said go down to --

3 MS. MC DONALD: Go down to Paris, Illinois,
4 and take care of some things there and set things
5 up. I have some people that look after properties
6 there. I always have people in New York that look
7 after things, but there's some things I need to take
8 care of there and then head to Arizona because I've
9 decided to -- I'm not sure yet whether I'm going to
10 take the service dog or not that was my father's.

11 THE COURT: Just for the record, your motion
12 and notice show your address is 340 South Lemon
13 Street, Walnut, California.

14 MS. MC DONALD: That's my mailing address,
15 sir, that's not my residential address.

16 THE COURT: Your residential address is in
17 Paris, Illinois?

18 MS. MC DONALD: That's what I'm using at this
19 time.

20 THE COURT: What's the address?

21 MS. MC DONALD: 9 Lakewood Drive, Paris,
22 Illinois. I'm not living there. In fact, there's
23 been people in and out of there because it's a
24 rental property for my -- it's --

1 THE COURT: And as far as heirship,
2 Mr. Kinnally, what would you be prepared to put on
3 as witnesses?

4 MR. KINNALLY: Well, as I told you on
5 Thursday, Judge, we have five witnesses. Two, I
6 believe, are -- no, three are under subpoena which
7 would include Attorney Parsons; Attorney Scifo; Mike
8 White, who lives in Michigan; Shawn Mc Donald would
9 testify; as well as John Mc Donald, Shawn's father
10 and the Decedent's father.

11 THE COURT: What is the status of the
12 heirship in this case as of now, before this hearing
13 commences?

14 MR. KINNALLY: The status of the heirship is
15 that we do not believe Ms. Mc Donald is an heir.
16 She has to prove that she is, and I don't think she
17 can do that.

18 THE COURT: Okay. So that's what the court
19 file would show now --

20 MR. KINNALLY: That's exactly what the
21 court --

22 THE COURT: -- without this hearing?

23 MR. KINNALLY: That's exactly what the court
24 file would show. She was listed originally. I

1 wasn't involved when the petition for letters of
2 administration were filed. She was listed at that
3 time but not listed as an heir with respect to
4 relatives of the Decedent. That was prepared by
5 Ms. Gosselin. She can speak to that better than I.
6 I was not in the case at that time. It was in
7 December of '17, I believe.

8 MS. GOSSELIN: That is correct, and she was
9 mentioned in the affidavit of heirship. There was a
10 statement in the affidavit of heirship stating that
11 the Decedent had participated in a marriage
12 ceremony' but he was under plenary guardianship at
13 that time and, therefore, the marriage was void
14 ab initio.

15 THE COURT: All right. Well --

16 MS. GOSSELIN: And Judge Noverini did sign
17 off on the order declaring guardianship, naming the
18 two parents and the brother and sisters.

19 MS. MC DONALD: Your Honor?

20 THE COURT: Yes.

21 MS. MC DONALD: Judge Noverini had already
22 been removed from the case. Subsequent to
23 Judge Noverini being removed from the case, they
24 filed letters of office. I was not listed on the

1 original application for letters of office.

2 Our estate attorney at that time
3 contacted Ms. Gosselin -- Mr. Kinnally was not
4 listed as the attorney of record -- and actually
5 informed her I was not listed on the records of
6 office; and if she did not, in fact, correct her
7 application for letters of office, that he would be
8 turning her in to the ARDC and have her sanctioned,
9 at which time he received another letter.

10 I'm sorry. Did you want to say
11 something? I know you're laughing again.

12 THE COURT: You can just talk to me, please.

13 MS. MC DONALD: Okay. Then on January 4th
14 Mr. Lutrey had been retained. In December he came
15 to court and he also spoke to Ms. Gosselin about
16 this matter. Her response to him is, we don't
17 acknowledge the marriage. One of the other --

18 THE COURT: All right. So you have -- and
19 you have witnesses as to heirship who are going to
20 be whom now? I know there was -- we discussed this
21 at length on Thursday, as to whether or not you
22 filed a witness list.

23 MS. MC DONALD: I did.

24 THE COURT: And counsel for the Administrator

1 doesn't think you did.

2 MS. MC DONALD: I did.

3 THE COURT: And I don't know what you have
4 filed. However, we did see a 213 -- Rule 213
5 disclosure form that was not complete, but it was
6 presumably filed. We don't know whether it was
7 filed. It doesn't have any file stamps, but it is
8 attached as an exhibit to a couple of pleadings that
9 we discussed on Thursday, November 13th.

10 So as to heirship, you want
11 Mr. Rummerfield and Westacott to testify about what?

12 MS. MC DONALD: Mr. Rummerfield can
13 specifically attest -- testify as to heirship
14 because of the numerous conversations he had with
15 John over -- even more recently as well as in the
16 years -- you know, through the years. But to be
17 specific, in that last year they had significant
18 conversations about -- what John's goals and wishes
19 were moving forward in life.

20 Mr. Eric Westacott is not
21 testifying to the heirship; but he's testifying to
22 the mental fitness of Dr. John Mc Donald because Dr.
23 Mc Donald was, in fact, engaged in work; and Mr.
24 Eric Westacott was one of the people assisting him

1 in lining out and looking at various legal documents
2 that John was having him vet due to Dr. Mc Donald
3 being offered seats on corporate boards.

4 THE COURT: Are those -- so he has opinions?

5 MS. MC DONALD: Yes, sir.

6 THE COURT: About fitness or capability?

7 MS. MC DONALD: He has an opinion based upon
8 his working with John. We filed -- I'm not --
9 again, forgive my lack of knowledge in regard to the
10 witness list.

11 After I was here on Thursday, I
12 liaised with Mr. Lutrey and Mr. Jeff O'Kelley, our
13 counsel, and they supplied me with documents showing
14 that the witness list had been supplied and with --
15 as they -- to use their words, with particularity
16 they indicated what all of our witnesses would be
17 testifying to.

18 They also supplied through another
19 attorney in the firm, Mr. Nate Katz, a supplemental
20 witness list in terms of experts; and I do know one
21 of the doctors that was coming from the McLean
22 Hospital at Harvard was going to be coming to
23 testify as to the -- in regard to addiction,
24 substance abuse, and what the medical profession

1 defines disability to. Those documents were
2 provided not only to opposing counsel but they were
3 filed with the Court.

4 THE COURT: What about the -- any subpoenas
5 issued to these two witnesses that you want?

6 MS. MC DONALD: No, sir. We did not have a
7 need to depose them.

8 THE COURT: No, I mean for trial today.

9 MS. MC DONALD: No, sir, no subpoenas for
10 trial have been issued to any of my witnesses.

11 THE COURT: The Court is subject to
12 considerations of Supreme Court Rule 231 when there
13 is an application for a continuance on the day of
14 trial and that this motion that was filed 11/18,
15 today, at 3:49 a.m., and noticed up for December 3rd
16 at 9:00 a.m. because of somebody at the clerk's
17 office saying that's the best they could do is
18 notice it up, it is here as an emergency, more or
19 less. It doesn't designate or follow our local
20 rules as far as emergency, but I am considering it
21 and I've considered all your arguments.

22 And as far as due diligence, from
23 the arguments that you make, Ms. Mc Donald,
24 regarding what you don't have, what you would like

1 to have, those things have been going on for two
2 months now, when your attorneys withdrew. And on
3 Thursday, you represented that you would be ready
4 nonetheless to proceed pro se, and you represented
5 the same things that you're representing this
6 morning as far as your father's end-of-life
7 treatment. And then you contacted the clerk's
8 office and nothing happened on Friday, nothing
9 happened on Saturday, Sunday, until this morning;
10 and so as far as due diligence, there is -- there's
11 a want or a lack of due diligence to present this
12 motion.

13 There was no due diligence in the
14 motion or the affidavit that should be attached.

15 MS. MC DONALD: What's that?

16 THE COURT: No -- no showing of due diligence
17 as to obtaining the testimony of Patrick Rummerfield
18 or Eric Westacott. That you diligently -- there's
19 nothing in this motion that says that you diligently
20 tried to get their testimony here and that you
21 couldn't get it for whatever reason. And if you did
22 several weeks ago, for instance, then you probably
23 should have made that motion several weeks ago.

24 MS. MC DONALD: I wasn't in a position to

1 make that motion, Your Honor.

2 THE COURT: I know because you didn't show up
3 here.

4 MS. MC DONALD: I didn't -- I didn't miss
5 court.

6 THE COURT: After your lawyers withdrew until
7 last Thursday.

8 MS. MC DONALD: That was the next court date
9 scheduled. I never blew off a court date, Your
10 Honor.

11 THE COURT: You can make your own court
12 dates, as you know.

13 MS. MC DONALD: I didn't know that. I
14 apologize. I wasn't aware of that.

15 THE COURT: At any rate, I'm still talking.
16 So there are -- there is a lack of
17 showing that the evidence would be material to
18 this -- to the issues in this case as well. And
19 so -- and also the reason that you need to re-engage
20 your attorneys to act for you doesn't show me that
21 there was due diligence on that either, and that
22 same reason was -- existed for the last two months
23 and nothing was ever said to prevent us from going
24 forward with the trial today, which we have reserved

1 time for and you assured us that we would be ready
2 to go, or that you would be ready to go even though
3 you didn't think you were totally ready. And as far
4 as your father's condition, you would still be able
5 to do this.

6 Now, without -- so, therefore, what
7 I'm going to do is deny the motion to continue
8 today. If you can't go forward, we'll take it from
9 there. If you can go forward, then you should put
10 on your first witness, because I've already had
11 enough of an opening statement through all this talk
12 in regards to the motion to continue to know what
13 the issues are going to be.

14 So you have apparently brought one
15 of your witnesses here today so -- or at least one.
16 So if you want to call your first witness, we can go
17 ahead this morning. Otherwise, we are going to --
18 we'll go from there. It depends what you want to
19 do. If you want to talk to the parties you came
20 with and we'll take a break for 10 minutes.

21 MS. MC DONALD: Can I ask a question?

22 THE COURT: Yes.

23 MS. MC DONALD: I don't understand what you
24 mean when you refer to due diligence. I did -- I

1 have been in constant contact with my prior counsel
2 about what I needed to do, and I was mindful that --

3 THE COURT: But there was a trial scheduled
4 today.

5 MS. MC DONALD: I'm mindful of that.

6 THE COURT: All right.

7 MS. MC DONALD: So I didn't know what I
8 needed to attach to show that due diligence. I
9 haven't -- because of the late nature in which I
10 spoke to Dr. Gonzalez in Arizona last night, like I
11 said, I haven't had the opportunity to see what has
12 been sent over to me in terms of his letter to
13 attach to -- because I had intended to attach to the
14 motion to continue what his -- in support of my dad.

15 I also want to comment about last
16 Thursday when I was here. I said I wasn't -- I said
17 I didn't say I was willing to relinquish heirship.
18 What I said is I'm not here for things. I want my
19 marriage and I want the ability to appoint the
20 persons that my husband would have wished for to act
21 on his behalf. This is -- I'm out of my depth here,
22 Your Honor; and God forbid, like I said prior to us
23 coming up here, my mother has left, prior to coming
24 up here, at least three messages that I did not look

1 at because I didn't want to be --

2 THE COURT: All right. Well, I'll give you
3 time to decide what you want to do going forward.
4 10 minutes, 15 minutes, if you need it. So we'll
5 resume at 10:05.

6 MS. MC DONALD: And God forbid something's
7 happened with my father and we commence, what
8 about -- am I required then to be here tomorrow and
9 the next day and then --

10 THE COURT: When the trial starts, the
11 trial's ongoing. If you have another reason for a
12 continuance during the trial, then you'll bring it
13 up at that point.

14 MS. MC DONALD: I don't want to be here when
15 my dad dies.

16 THE COURT: You want to go. We'll take a
17 break.

18 (Recess taken.)

19 THE COURT: Okay. Let's resume.

20 Please come forward again. Okay.

21 Ms. Mc Donald, are you prepared to
22 proceed with witnesses?

23 MS. MC DONALD: I would like to proceed with
24 the provision that, God forbid something happens,

1 the Court would consider an emergency.

2 THE COURT: Okay. Well, we can cross that
3 bridge when we come to it.

4 MS. MC DONALD: Yes, sir.

5 THE COURT: Okay. But you're ready to call
6 your first witness?

7 MS. MC DONALD: I am.

8 THE COURT: Okay. Then who is your first
9 witness?

10 MS. MC DONALD: Diane Boyer.

11 THE COURT: Okay.

12 MR. KINNALLY: Who?

13 THE COURT: Diane Boyer.

14 MR. KINNALLY: Yeah, that's not a witness
15 that was listed.

16 THE COURT: All right. Hold on. Where am I
17 finding the --

18 MR. KINNALLY: I'll get it for you.

19 THE COURT: Exhibit 9 or whatever it was.

20 MS. MC DONALD: It was a rather lengthy list,
21 Your Honor, and Diane is definitely on the list.

22 THE COURT: Here we go, Exhibit F.

23 MR. KINNALLY: Right. This is the list that
24 I told you never was filed.

1 MS. MC DONALD: Mr. O'Kelley on Friday sent
2 me copies of their filing, and this is the list that
3 was filed along with a supplemental list that was
4 filed by Mr. Nate Katz.

5 THE COURT: A supplemental list?

6 MS. MC DONALD: Yes, those were for the
7 experts, Your Honor, but Ms. Boyer is not an expert.
8 She's here as a preliminary.

9 MR. KINNALLY: It says here she's going to
10 testify supposedly about physical and mental health
11 capacity of John Mc Donald, III. I don't know what
12 that's got to do with heirship.

13 The Court's already determined that
14 John Mc Donald, III, was a ward of the court and
15 lacked total capacity back in May of 2017, so I'm
16 not sure even if it was disclosed and listed that
17 it's got anything to do with why we're here today.

18 THE COURT: Perhaps we can delineate which
19 pleadings, if any, we are going off of to determine
20 whether petition allegations have been answered
21 and -- unless I'm just having a hearing on heirship
22 without pleadings.

23 MR. KINNALLY: No.

24 THE COURT: Okay.

1 MR. KINNALLY: So the original -- I gave you
2 a list of documents on Wednesday --

3 THE COURT: Okay.

4 MR. KINNALLY: -- which was my witness list
5 as well as my trial exhibit list.

6 THE COURT: Right.

7 MR. KINNALLY: Okay. I can go through it if
8 you want, Judge.

9 So the relevant judgments are
10 Nos. -- I'm going from the first page -- 1, 2, 7 --
11 that was your order denying their motion to vacate
12 the order of administration and my client being
13 appointed -- I believe they filed a petition at some
14 point for heirship, but I didn't put that in my
15 exhibit list because I don't represent her and I
16 didn't think that was significant at least from my
17 advocacy standpoint.

18 THE COURT: All right. So at this point, the
19 issue is the validity of the marriage?

20 MR. KINNALLY: That's right.

21 THE COURT: That's what -- presumably
22 whatever petition for heirship that Ms. Mc Donald
23 filed says that it's valid, and that is the proofs
24 that she wants to present today in support of that

1 petition.

2 MR. KINNALLY: That's true.

3 THE COURT: I don't have that petition in
4 front of me, but we'll get it on the screen.

5 And then you can -- as far as Diane
6 Boyer testifying, you may call her and we'll have
7 her sworn by the clerk.

8 Okay. Diane Boyer?

9 MS. MC DONALD: Can I sit down --

10 THE COURT: You may, yes.

11 MS. MC DONALD: -- and ask the questions?

12 THE COURT: Yes, you can sit down.

13 Mr. Clerk, could you swear in the
14 witness?

15 (Witness sworn.)

16 THE COURT: All right. You may proceed to
17 the witness stand.

18 Ms. Mc Donald, who is the gentleman
19 next to you?

20 MS. MC DONALD: This is Visar Belegu.

21 THE COURT: Okay. Well, he's not a party so
22 he has to sit in the back benches.

23 MS. MC DONALD: Okay. I'm sorry.

24 MR. KINNALLY: Can we make a motion to

1 exclude witnesses?

2 THE COURT: Motion to exclude witnesses
3 including any that you intend to call as well?

4 MR. KINNALLY: No, not as far as I'm
5 concerned.

6 THE COURT: Pardon?

7 MR. KINNALLY: Motion to exclude their
8 witnesses. If you want to make it mutual, we can do
9 it.

10 THE COURT: Okay. Well, I would, for
11 fairness, exclude anybody that is intended to
12 testify.

13 MR. KINNALLY: The only person that would be
14 excluded would be Mr. Mc Donald, Sr. Shawn
15 Mc Donald is the independent administrator so he's
16 here. The other two ladies I'm not calling.

17 THE COURT: All right. So Mr. Mc Donald,
18 Sr., if you would wait outside, please. I'm going
19 to grant the motion to exclude and Dr. and Mr. --
20 who are your other two -- are those witnesses?

21 MS. MC DONALD: Bement.

22 THE COURT: Is he intended to testify?

23 MS. MC DONALD: Yes, sir.

24 THE COURT: So witnesses, when you're ready

1 to testify, you may come back, we'll call you back;
2 otherwise, wait outside, and when you're ready to
3 testify, we'll call you. And then presumably after
4 you have testified you'll be able to remain, if you
5 would like, and hear the rest of the witnesses, but
6 for now, witnesses are excluded.

7 Ms. Mc Donald, you may proceed.

8 MS. MC DONALD: Ms. Boyer -- is it okay if I
9 refer to her as Diane?

10 THE COURT: You can ask her questions.

11 MS. MC DONALD: Okay.

12 DIANE BOYER

13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. MC DONALD:

17 Q. Okay. Is it okay if I refer to you as
18 Diane?

19 A. Yes, certainly.

20 Q. Do you know why we're here today?

21 A. Yes, I do.

22 THE COURT: Let's identify her first, if you
23 would.

24 THE WITNESS: I'm Diane Boyer.

1 THE COURT: What's your address?

2 THE WITNESS: My address is 7500 Illinois
3 Highway 1, Paris, Illinois.

4 THE COURT: Thank you.

5 All right. Ms. Mc Donald, you made
6 proceed further.

7 BY MS. MC DONALD:

8 Q. Are you familiar with why we are here
9 today?

10 A. Yes, I am.

11 Q. Did you know Dr. John Mc Donald?

12 A. Yes, I did.

13 Q. During the course of the time that you
14 knew Dr. Mc Donald, were you aware of his intentions
15 to be married to me?

16 MR. KINNALLY: Foundation objection.

17 THE COURT: Sustained.

18 BY MS. MC DONALD:

19 Q. Did you ever witness Dr. Mc Donald at
20 any time to be incapable of managing his own affairs
21 or making sound decisions or anything irregular
22 outside the appropriate boundaries of normal
23 conduct?

24 A. No.

1 MR. KINNALLY: Objection, Judge.

2 BY THE WITNESS:

3 A. No.

4 THE COURT: There's an objection. Sustained.

5 Can you establish when and where
6 and who and how this witness knows you or Dr. -- or
7 Mr. Mc Donald, III?

8 BY MS. MC DONALD:

9 Q. When was the first time you met
10 Dr. Mc Donald, to the best of your recollection?

11 A. To the best of my recollection, and I'm
12 sorry, I'm not good with dates, but it was when you
13 and John and several other people I knew were at the
14 U of I and I was up there helping you move and -- or
15 I think that's what we were doing. Anyway, we -- I
16 met him -- I met him then for the first time.

17 MR. KINNALLY: Objection, move to strike.
18 That's nonresponsive to the question. There's no
19 foundation with respect to it.

20 THE COURT: Sustained.

21 BY MS. MC DONALD:

22 Q. So in the past two years -- I guess it's
23 been in the past three years, have you had the
24 opportunity to interact with myself and my husband?

1 A. Yes.

2 Q. And under what -- what were those
3 circumstances?

4 A. Well, when I had -- the first time I saw
5 you when you came back to Paris, I saw you guys at
6 Wal*Mart, and then we started talking after that;
7 but then the real interaction I had was when John
8 came out to my house and lived with me for two
9 weeks, and that was because of a fraudulent court
10 order that separated you two.

11 MR. KINNALLY: Objection, Judge, as to
12 "fraudulent."

13 THE COURT: Sustained.

14 MR. KINNALLY: Judge, could we have a little
15 foundation as to what year we are in here?

16 THE COURT: Yes.

17 Dates, times, who was present,
18 things like that is what foundation is about. If
19 there's conversations, you have to have a foundation
20 for who was there, when it happened, when it was.
21 So proceed, re-ask.

22 BY MS. MC DONALD:

23 Q. So you said -- can you give me a time
24 and date the next time you saw myself and my husband

1 at Wal*Mart? To the best of your recollection, when
2 was that?

3 A. April of '17.

4 Q. You indicated that there came a time
5 that John resided at your home. And when was that,
6 to the best of your recollection?

7 A. It was -- it was December, but it may
8 have been the end of November. I'm not good with --

9 THE WITNESS: I apologize, Your Honor, I'm
10 not good with dates.

11 BY MS. MC DONALD:

12 Q. And you testified that John was staying
13 out there because of a court order?

14 A. Yes.

15 MR. KINNALLY: Objection, Judge.

16 THE COURT: Sustained. Leading.

17 Go ahead, ask another question.

18 BY MS. MC DONALD:

19 Q. Did you ever attend court with my
20 husband and myself?

21 A. Yes, once.

22 Q. And what was the nature of those court
23 proceedings? Why were we going to court?

24 A. To establish that you were married and

1 you shouldn't have been separated.

2 Q. Was there a time before that, though,
3 that you brought John to court where he filed --

4 MR. KINNALLY: Judge, could we have some
5 foundation as to this court appearance, please. I'm
6 sorry to interrupt, but I'm going to object again.

7 THE COURT: Which court appearance?

8 MR. KINNALLY: I don't know. They said they
9 were going to court one time. She said she went one
10 time to court to determine whether or not a marriage
11 was valid, that's what I got, and I don't know when
12 that is and I would like to know.

13 THE COURT: Okay. Sustained.

14 Go ahead.

15 MS. MC DONALD: I don't believe she was
16 testifying to determine whether our marriage was
17 valid.

18 BY MS. MC DONALD:

19 Q. You did know that our marriage was
20 valid, did you not?

21 A. Yes.

22 MR. KINNALLY: Objection. It calls for a
23 legal conclusion.

24 THE COURT: Sustained.

1 BY MS. MC DONALD:

2 Q. Was there a time that you accompanied my
3 husband and I to go to court in the fall of 2017
4 before the Honorable Judge Steven Garst to get an
5 order of protection because of the harassment and
6 the stalking and the substantial bullying that we
7 were -- that John and I were experiencing whenever
8 we were in Paris?

9 MR. KINNALLY: Objection.

10 THE COURT: Sustained.

11 MS. MC DONALD: Your Honor, can I ask, like,
12 why that's sustained? That's significant to this
13 and I'm not trying to be argumentative.

14 THE COURT: No, it's a general objection for
15 various reasons. Could be -- first of all, it's
16 leading --

17 MS. MC DONALD: All right.

18 THE COURT: -- assumes facts not in evidence,
19 and it may be irrelevant.

20 MS. MC DONALD: Can I rephrase the question?

21 THE COURT: Ask another question.

22 BY MS. MC DONALD:

23 Q. Did you accompany us to court in Edgar
24 County in the fall of 2017?

1 A. Yes.

2 Q. And, to your knowledge, as a nonlegal
3 professional, what was the purpose of us going to
4 court -- of John and I going to court?

5 MR. KINNALLY: Objection. It's not relevant.

6 THE COURT: Sustained.

7 BY MS. MC DONALD:

8 Q. In the fall of 2017, were you witness to
9 any bullying, stalking, trespassing on the property
10 of my husband and my residence where we were staying
11 when we were down in Paris, Illinois?

12 MR. KINNALLY: Objection. It's not relevant.

13 THE COURT: Sustained.

14 BY MS. MC DONALD:

15 Q. Were you involved in the preparations or
16 the knowledge of John and I intending to get
17 married?

18 A. Yes.

19 Q. When, to the best of your knowledge, do
20 you first remember that being brought to your
21 attention?

22 A. Probably a month before you got married.

23 Q. Did you ever have any independent
24 conversations with John about his intentions to

1 marry me and preparations for the marriage ceremony?

2 MR. KINNALLY: Objection, calls for a hearsay
3 response.

4 THE COURT: Sustained.

5 BY MS. MC DONALD:

6 Q. Did you, yourself, ever initiate any
7 conversations with John regarding his intentions to
8 marry?

9 A. Yes.

10 Q. And can you characterize what some -- in
11 summary, what that conversation was?

12 MR. KINNALLY: Objection, calls for a hearsay
13 response by the Decedent.

14 THE COURT: Sustained.

15 MS. MC DONALD: I would like Diane to be able
16 to testify as to what her questions to and what her
17 conversation -- what her words were to Dr. Mc Donald
18 and not what my husband's responses necessarily were
19 to her, but she can testify to the fact that she had
20 a conversation with my husband in regard to plans
21 for our marriage ceremony.

22 THE COURT: Okay.

23 MR. KINNALLY: She already testified to that,
24 Judge. She said she had a conversation.

1 THE COURT: Right, she testified to that.

2 BY MS. MC DONALD:

3 Q. Was there ever a conversation about us
4 perhaps being married on your property?

5 MR. KINNALLY: Objection. That calls for a
6 hearsay response because it would have been uttered
7 by the Decedent.

8 MS. MC DONALD: No, it wouldn't have been.

9 BY THE WITNESS:

10 A. Yes, I invited --

11 THE COURT: Wait a minute. When there's an
12 objection, don't testify until I rule on it.

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay. Can I hear the question
15 back, please.

16 (Question read.)

17 THE COURT: Sustained; no foundation.

18 Who is "us"?

19 MS. MC DONALD: My husband and myself.

20 THE COURT: Okay. Sustained as to the
21 original objection.

22 Rephrase. Ask another question.

23 BY MS. MC DONALD:

24 Q. Did my husband and I ever discuss with

1 you the possibility of having our ceremony on your
2 property?

3 MR. KINNALLY: Same objection, Judge.

4 THE COURT: Sustained as to the Decedent.

5 BY MS. MC DONALD:

6 Q. Did you ever offer a conversation with
7 us or offer to have us be -- my husband and I be
8 married on your property?

9 MR. KINNALLY: Same objection, Judge. And I
10 would also remind the Court as we indicated last
11 week that Ms. Mc Donald cannot testify in this case
12 and she's attempting to do that through this witness
13 by the leading nature of her question.

14 THE COURT: Sustained.

15 BY MS. MC DONALD:

16 Q. Do you know who Shawn Mc Donald is?

17 A. Yes.

18 Q. Did John -- did my husband wish to have
19 a relationship or did John ever state to you what
20 his intentions were in regard to Shawn Mc Donald?

21 MR. KINNALLY: Objection.

22 THE COURT: Sustained.

23 BY MS. MC DONALD:

24 Q. Were you ever in fear personally of

1 Shawn Mc Donald?

2 A. Not for me but for John.

3 MR. KINNALLY: Move to strike as to "for
4 John."

5 THE COURT: Overruled.

6 BY MS. MC DONALD:

7 Q. Could you elaborate as to what your
8 concerns were in terms of your fears regarding John?

9 You just testified that you weren't
10 necessarily in fear of Shawn Mc Donald but that you
11 were for John. Could you elaborate on that?

12 MR. KINNALLY: Objection, Judge. It's not
13 relevant.

14 THE COURT: Sustained.

15 BY MS. MC DONALD:

16 Q. Is it your personal belief that John and
17 I shared a common belief?

18 MR. KINNALLY: Objection. It's not relevant.

19 THE COURT: Sustained.

20 BY MS. MC DONALD:

21 Q. Do you believe that Shawn Mc Donald
22 should be the representative of my husband's estate?

23 MR. KINNALLY: Objection, Judge. He is the
24 representative. What her belief is does not matter.

1 THE COURT: Sustained as to relevance.

2 BY MS. MC DONALD:

3 Q. Do you believe that there is any
4 evidence that could be presented as to why Shawn
5 Mc Donald should not be allowed to be the supervised
6 administrator of my husband's estate?

7 MR. KINNALLY: Objection, relevance.

8 THE COURT: Sustained.

9 MS. MC DONALD: The relevance, Your Honor, is
10 that in the course of the year of 2017, there was
11 significant criminal activity that was going on even
12 prior to the guardianship being filed by Mr. Shawn
13 Mc Donald. Numerous reports were filed with the
14 Attorney General's office for identity theft, the
15 U.S. Postal Service, Social Security, and many other
16 government agencies where even prior to --

17 THE COURT: Well, wait a minute.

18 MR. KINNALLY: Judge --

19 THE COURT: The objection was already
20 sustained and now you're testifying yourself. So go
21 ahead and ask another question of this witness. If
22 you're done with this witness, then they can
23 cross-examine.

24

1 BY MS. MC DONALD:

2 Q. Do you believe that my husband knew what
3 it meant to be married, that he was capable of
4 knowing what the duties and responsibilities were to
5 be married?

6 A. Yes.

7 MR. KINNALLY: Objection, foundation, Judge.

8 THE COURT: Sustained.

9 BY MS. MC DONALD:

10 Q. Do you believe that there's any reason,
11 foundationally, I guess, that this case should be
12 brought?

13 MR. KINNALLY: Objection. It's irrelevant.

14 THE COURT: Sustained.

15 MR. KINNALLY: She's not in the position to
16 answer that.

17 MS. MC DONALD: Your Honor, I do believe
18 she's in a position to answer that because John
19 spent significant time with her, she knew John's
20 will, and you can't have it both ways.

21 MR. KINNALLY: Objection, Judge. She's now
22 testifying.

23 THE COURT: Sustained. It has to be her
24 testimony, not yours.

1 BY MS. MC DONALD:

2 Q. Do you believe that I am the legal heir
3 of John Mc Donald?

4 MR. KINNALLY: Objection, Judge, calls for a
5 legal conclusion.

6 MS. MC DONALD: I'm not asking --

7 THE COURT: Sustained.

8 MS. MC DONALD: I'm not asking her to render
9 a legal opinion. I'm asking her based upon her
10 interactions with my husband and I over the course
11 of a year what she perceived our relationship to be
12 as a true and valid marriage.

13 MR. KINNALLY: Objection. She's now
14 testifying.

15 THE COURT: Sustained.

16 Ask her things about what she may
17 have observed or -- but not what her belief is.

18 BY MS. MC DONALD:

19 Q. Did you observe -- and let's keep it to
20 2017 -- John and I interacting together?

21 A. Yes, many times.

22 Q. In terms of frequency, was it once a
23 month? Twice a month? Once a week? Twice a week?

24 A. Pretty much every week.

1 Q. And then during the week, was that out
2 in public? Was it at our home? Your home? Could
3 you be specific?

4 A. All three. We went out to dinner, you
5 were at my house, I was at your house.

6 Q. Were these arranged events or was there
7 a casualness about it that we would drop in or you
8 would drop in unannounced?

9 A. Yes.

10 Q. Did you have the opportunity to observe
11 John and I together in an impromptu -- where it
12 wasn't planned? It was like you just came by?

13 A. Yeah, practically everything was not
14 planned that we did, except for when I took you out
15 for your wedding dinner.

16 Q. And when -- let's start with when you
17 came by our house. Can you give some
18 characterization as to what you witnessed, how we
19 lived our life?

20 MR. KINNALLY: Foundation, objection.

21 MS. MC DONALD: I'd like to establish that we
22 were living together as husband and wife.

23 MR. KINNALLY: Objection. She's testifying.

24 THE COURT: The objection was to foundation.

1 Sustained.

2 BY MS. MC DONALD:

3 Q. When you came over to the house, were
4 there times where you just specifically spoke to me
5 or did you speak to John or did you speak to both of
6 us?

7 A. Both of you.

8 Q. Did you ever witness anything out of the
9 ordinary or of any concern?

10 MR. KINNALLY: Objection, Judge. It's not
11 relevant.

12 THE COURT: Sustained.

13 BY MS. MC DONALD:

14 Q. In your personal opinion, did you
15 believe that we were -- that we were happily --
16 living together happily and that John was happy?

17 A. Yes.

18 Q. Did he ever indicate to you in any way
19 that he was happy?

20 MR. KINNALLY: Objection, calls for a hearsay
21 response of the Decedent.

22 THE COURT: Sustained.

23 BY MS. MC DONALD:

24 Q. You testified that you took us out for

1 dinner after our wedding. Do you remember when that
2 was?

3 A. Maybe three or four days after the
4 wedding.

5 MR. KINNALLY: Objection, Judge. She doesn't
6 know.

7 THE COURT: Overruled.

8 MS. MC DONALD: Please allow her to finish
9 answering.

10 If you could repeat yourself.

11 BY THE WITNESS:

12 A. I said it was either three or four days
13 after the wedding.

14 BY MS. MC DONALD:

15 Q. And was it well known among friends and
16 family and affiliates and colleagues that we had
17 married?

18 MR. KINNALLY: Objection, foundation.

19 THE COURT: Sustained.

20 MS. MC DONALD: I would like to establish
21 that this was a wedding that had been being planned
22 for well over nine months and that, in fact, there
23 was -- to come to the Court --

24 THE COURT: Wait, just ask questions of the

1 witness.

2 BY MS. MC DONALD:

3 Q. Along with yourself, were there other
4 people aware that John and I were to be married?

5 A. Yes.

6 Q. And were there other people who
7 celebrated our marriage subsequent to the marriage
8 openly?

9 MR. KINNALLY: Objection, Judge, foundation.

10 THE COURT: Sustained.

11 MS. MC DONALD: Your Honor --

12 THE COURT: Any further questions?

13 MS. MC DONALD: At this time I'll let them.

14 THE COURT: All right. Does anyone need a
15 break right now? We have only been going about
16 25 minutes.

17 MR. KINNALLY: I don't have any questions,
18 Judge.

19 THE COURT: No questions, okay.

20 Wait, your client wants to talk to
21 you.

22 MR. SHAWN MC DONALD: Can I speak with my
23 counsel?

24 THE COURT: Go ahead.

1 MS. MC DONALD: Your Honor, is Ms. Boyer free
2 to step down?

3 THE COURT: One moment.

4 MR. KINNALLY: No questions.

5 THE COURT: All right. You may step down,
6 Ms. Boyer. Thank you.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 (There was a conversation off the
10 record.)

11 MR. KINNALLY: Do you want to take a break,
12 Judge, or keep going or --

13 THE COURT: Do you have another witness at
14 this time?

15 MS. MC DONALD: Yes, Dr. Visar Belegu. Do I
16 need to get him?

17 THE COURT: Yes.

18 (Recess taken.)

19 THE COURT: Calling this witness?

20 MS. MC DONALD: Yes, Dr. Belegu.

21 THE COURT: Okay. Dr. Belegu, if you would
22 step in front of the clerk here and be sworn.

23 (Witness sworn.)

24 THE WITNESS: I do.

1 THE COURT: And you may proceed over by where
2 the bailiff is.

3 THE WITNESS: Thank you.

4 THE COURT: Okay. Doctor, before we begin,
5 I'll ask you the identification questions.

6 What is your name, address, and
7 occupation?

8 THE WITNESS: Visar Belegu. I live at
9 706 Hatherleigh Road, Baltimore, Maryland 21212.
10 I'm a scientist.

11 THE COURT: Could you spell your first and
12 last name, please?

13 THE WITNESS: First name is V-i-s-a-r. Last
14 name is B-e-l-e-g-u.

15 THE COURT: All right. Ms. Mc Donald, you're
16 asking the questions of this witness. Go ahead.

17 VISAR BELEGU
18 called as a witness herein, having been first duly
19 sworn, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. MC DONALD:

22 Q. Dr. Belegu, may I refer to you as Visar?

23 A. Yes, ma'am.

24 Q. Are you familiar with why we are here

1 today?

2 A. I believe so.

3 Q. Would you state for the Court what you
4 believe the reasons for us being here are?

5 MR. KINNALLY: Objection, Judge. That's got
6 nothing to do with this case.

7 THE COURT: Sustained.

8 BY MS. MC DONALD:

9 Q. Is it your understanding that we are
10 here in regard to the estate of your colleague, Dr.
11 John Mc Donald?

12 A. Yes, ma'am.

13 Q. Are you aware that Shawn Mc Donald, my
14 husband's brother, is challenging the veracity of my
15 marriage and John's marriage to me?

16 MR. KINNALLY: Object to the form of the
17 question because she's now testifying with respect
18 to the relationship.

19 THE COURT: Sustained.

20 BY MS. MC DONALD:

21 Q. Were you aware that John and I had
22 married?

23 A. Yes, ma'am.

24 Q. When did you become aware of that?

1 A. It was September, I believe it was 11th,
2 2017.

3 Q. Were you aware prior to that date of
4 John and my intention to marry?

5 A. Yes, ma'am.

6 Q. Was this something that only you knew or
7 was it something that was known amongst our friends,
8 colleagues, family members?

9 MR. KINNALLY: Objection, Judge. How would
10 he know that?

11 THE COURT: Sustained.

12 BY MS. MC DONALD:

13 Q. Did you ever have conversations with
14 other people that were friends of yours and John's
15 that you shared in common about John's intentions to
16 marry me?

17 A. Yes, ma'am.

18 MR. KINNALLY: Foundation, objection.

19 THE COURT: Overruled.

20 Next question. He answered.

21 BY THE WITNESS:

22 A. Yes, ma'am, I did discuss John's will,
23 desire, and such to marry.

24 MR. KINNALLY: Objection. Now he's

1 testifying with respect to what John said, Judge.

2 It's a hearsay response.

3 THE COURT: He was finishing his answer, I
4 take it.

5 THE WITNESS: Yeah.

6 THE COURT: Next question that doesn't ask
7 for hearsay.

8 MS. MC DONALD: I'm sorry, sir? Your Honor?

9 THE COURT: Next question that does not ask
10 for hearsay.

11 BY MS. MC DONALD:

12 Q. Did you personally, Visar, speak to
13 other people about John's intentions to get married?

14 A. Yes, I did.

15 MR. KINNALLY: Objection, Judge. That
16 clearly calls for a hearsay response. These people
17 aren't before the Court.

18 THE COURT: I understand. You didn't ask
19 what they said -- she didn't ask, so overruled.

20 MR. KINNALLY: Okay.

21 BY THE WITNESS:

22 A. So, yes, I did.

23 BY MS. MC DONALD:

24 Q. And approximately how long were you

1 aware of, in your belief, of John's intentions to be
2 married to me?

3 MR. KINNALLY: Objection, form of the
4 question; foundation --

5 THE COURT: Sustained.

6 MR. KINNALLY: -- hearsay response.

7 THE COURT: Sustained.

8 BY MS. MC DONALD:

9 Q. To the best of your recollection, when
10 was the first time that you met me?

11 A. It was right after I went to work for
12 John in St. Louis, which was March 2004, right after
13 I had graduated.

14 Q. And were there times subsequent to that
15 that you were aware that I was in a relationship
16 with my husband?

17 MR. KINNALLY: Objection. That's not
18 relevant.

19 THE COURT: Sustained.

20 BY MS. MC DONALD:

21 Q. Is it your opinion -- not a legal
22 opinion, but is it your opinion that John and I
23 understood the responsibility of being husband and
24 wife?

1 MR. KINNALLY: Objection. It's not relevant.

2 THE COURT: Sustained.

3 BY MS. MC DONALD:

4 Q. Do you believe that his family would
5 have been aware of John's intentions to marry me
6 prior to the filing of any guardianship?

7 MR. KINNALLY: Objection. It's not relevant.

8 THE COURT: Sustained.

9 BY MS. MC DONALD:

10 Q. Did you ever witness John in any way to
11 be incapacitated or disabled or incapable of
12 rendering astute decisions or general everyday
13 decisions or being able to care for himself on a
14 day-to-day basis?

15 MR. KINNALLY: Objection, foundation.

16 THE COURT: Sustained.

17 MS. MC DONALD: I'm sorry?

18 THE COURT: Sustained.

19 MS. MC DONALD: Your Honor, they have alleged
20 that my husband was disabled. The fact is that the
21 entire guardianship case was brought with fraudulent
22 documents.

23 THE COURT: All right. If we're arguing
24 their objection now, I've already ruled on it. It

1 was not a good question. Next.

2 BY MS. MC DONALD:

3 Q. Were you aware that John was -- there
4 was a court proceeding that involved John in a
5 guardianship proceeding?

6 A. Yes, I was.

7 Q. And did you believe that John was in
8 need of a guardian?

9 MR. KINNALLY: Objection, Judge. He's not
10 qualified to answer that.

11 THE COURT: Sustained.

12 MS. MC DONALD: Your Honor, I do believe that
13 Dr. Belegu has the right to be able to answer to the
14 best of his -- though he was not a treating
15 physician of my husband, he does -- he is a
16 professional and he views the world through a
17 professional medical/scientist lens. He spent over
18 two decades working on a daily basis with my
19 husband, and he was fully aware of my husband's
20 capacity to conduct business and carry out his life
21 without the need of an assistant.

22 MR. KINNALLY: I object to the
23 characterizations, Judge. She's now testifying.

24 THE COURT: Sustained.

1 Do you have any other questions for
2 Dr. Belegu?

3 MS. MC DONALD: Yes.

4 BY MS. MC DONALD:

5 Q. In 2017, were you working with -- was
6 there a time where you were working with my husband
7 in a formal -- in a professional capacity?

8 A. Yes.

9 Q. And during that time, did you have the
10 opportunity to travel with my husband in a
11 professional capacity in 2017 after and during the
12 guardianship proceeding?

13 MR. KINNALLY: I'm going to object to this.
14 She has not established when this witness became
15 aware of the guardianship. He only indicated that
16 he knew about it. I would like some foundation with
17 respect to that, please.

18 THE COURT: Sustained.

19 BY MS. MC DONALD:

20 Q. Dr. Belegu, when did you become aware of
21 there being a guardianship being filed against John?

22 A. July 2017, I believe it was.

23 THE WITNESS: Can I expand on that, Your
24 Honor?

1 THE COURT: No. Next question.

2 BY MS. MC DONALD:

3 Q. How did you become aware of guardianship
4 proceedings?

5 A. Through conversations with John. He was
6 very upset when that had happened.

7 MR. KINNALLY: Objection, Judge, as to what
8 John said.

9 THE COURT: Sustained.

10 BY MS. MC DONALD:

11 Q. Were you ever contacted by anybody else
12 in regard to their attempts to gain privilege over
13 John? For example, were you ever contacted by Shawn
14 Mc Donald?

15 MR. KINNALLY: Objection, Judge,
16 characterization with respect to the question.

17 THE COURT: Sustained.

18 Rephrase.

19 BY MS. MC DONALD:

20 Q. Were you ever contacted in 2017 by Shawn
21 Mc Donald?

22 A. I believe it was January of 2018 that I
23 was contacted by Shawn.

24 Q. Did you ever have any knowledge of Shawn

1 Mc Donald prior to January of 2018?

2 A. Yes. Of course, yes.

3 Q. And what -- and in the year of 2017, to
4 the best of your recollection, was there ever a time
5 that Shawn Mc Donald attempted to contact you or did
6 contact you?

7 MR. KINNALLY: Judge, he just testified he
8 talked to him in January of 2018 for the first time.

9 MS. MC DONALD: That's not what he testified
10 to, Your Honor.

11 THE COURT: Overruled.

12 BY THE WITNESS:

13 A. Right. So I did get a voicemail in
14 January of 2018. I believe I got text messages from
15 him, and it was around January of 2017. It might
16 have been December 2016.

17 BY MS. MC DONALD:

18 Q. Did you help John Mc Donald move out of
19 his condo in Baltimore?

20 MR. KINNALLY: Objection. It's not relevant.

21 THE COURT: Sustained.

22 BY MS. MC DONALD:

23 Q. Was there ever a time where you had
24 items belonging to John because -- just to store

1 after he moved out of the condo in Baltimore?

2 MR. KINNALLY: Objection. It's not relevant.

3 THE COURT: Sustained.

4 BY MS. MC DONALD:

5 Q. Were you ever contacted by Shawn
6 Mc Donald and asked to ship items of John to him --
7 to ship items of John's to Shawn?

8 MR. KINNALLY: Objection. It's not relevant.

9 THE COURT: Sustained.

10 BY MS. MC DONALD:

11 Q. During the time that John and I were
12 married, did you ever have conversations -- any
13 conversation, other than the text messages or
14 perhaps e-mails you received -- from Shawn
15 Mc Donald?

16 MR. KINNALLY: Objection, assumes a fact not
17 in evidence at this time --

18 THE COURT: Sustained.

19 MR. KINNALLY: -- meaning the marriage.

20 BY MS. MC DONALD:

21 Q. In 2017, were you in regular contact
22 with John Mc Donald?

23 A. Yes, I was.

24 Q. And in frequency, approximately how

1 frequently were you in contact with John Mc Donald?

2 A. I would say at least once a week and
3 then probably a little bit more than that, maybe two
4 or three times a week, at times.

5 Q. And were those casual conversations, hi,
6 how are you doing; or were they of a professional
7 nature? Could you characterize the nature of your
8 calls and perhaps give a length of the calls?

9 MR. KINNALLY: Objection, calls for a
10 response of the Decedent, which is hearsay.

11 MS. MC DONALD: I do believe Dr. Belegu can
12 attest to, since he was a party to the calls, the
13 length and the nature of the call.

14 THE COURT: Overruled as to calling for
15 hearsay.

16 BY THE WITNESS:

17 A. Yeah, so some of them were personal.
18 John and I knew each other for a while. Some of
19 them were of a professional nature.

20 John was -- he kept me sort of
21 up to date on the things he was doing, and some of
22 it related to the work we had done before. A lot of
23 imaging stuff was discussed, MRI imaging, human
24 connectome imaging, because that was something we

1 were working on before.

2 And then that summer of 2017, he
3 had asked me to evaluate --

4 MR. KINNALLY: Now I object to it, Judge.
5 Now he's saying what he said and that is hearsay.
6 He said he asked, the Decedent asked him.

7 THE COURT: It's not -- as far as I know,
8 it's not on this issue, the truth of the matter
9 asserted. Let him finish.

10 BY THE WITNESS:

11 A. Right. So that summer he asked me to do
12 some work on evaluating a company on some
13 technology, and that was the matter that we took
14 trips together.

15 BY MS. MC DONALD:

16 Q. So you traveled just -- was it just --
17 just was you and John traveling in 2017?

18 A. Yes.

19 Q. For the business/professional purposes?

20 A. Yes. It was John and I only, yes.

21 Q. And so is it your testimony that John
22 was engaged in professionally working in 2017?

23 A. Yes, he was.

24 Q. And did you, in fact, publish a paper

1 where John is also an author in a major scientific
2 journal that came out -- that was subsequently --
3 appeared prior -- after --

4 MR. KINNALLY: Objection, Judge, form of the
5 question.

6 THE COURT: Could you rephrase that?
7 Sustained.

8 BY MS. MC DONALD:

9 Q. Did you and John publish a scientific
10 paper as to the work you were working on then and
11 prior to my husband's death?

12 A. Yes.

13 MR. KINNALLY: Objection, Judge.

14 BY MS. MC DONALD:

15 Q. And when was that paper published,
16 Dr. Belegu, to the best of your recollection?

17 A. I believe the last paper we had together
18 was published in -- either late 2017 or early 2018,
19 and it was a project that we had worked on together
20 for quite a while.

21 Q. You're aware that John passed away in
22 December of 2017. Was the paper accepted -- was the
23 scientific paper accepted for publication prior to
24 my husband's death?

1 A. I believe it was.

2 MR. KINNALLY: Objection, Judge, as to the
3 form of the question. She's now testifying as to
4 her marital relationship in the question.

5 THE COURT: Sustained.

6 BY MS. MC DONALD:

7 Q. Was the paper's acceptance to be
8 published accepted prior to John's death?

9 A. Yes, I believe the paper was accepted
10 prior to his death. I mean, we worked on it for
11 quite a while, but I think it was accepted before he
12 passed, yes.

13 Q. So it's your testimony that -- let's
14 just narrow it to the six months prior to John's
15 passing -- you were working, would you say, on a
16 weekly basis, a daily basis with John in a
17 professional capacity?

18 MR. KINNALLY: Objection, Judge. She's
19 leading the witness.

20 THE COURT: Sustained.

21 BY MS. MC DONALD:

22 Q. Yes or no, were you working with my
23 husband in the six months prior to his death in a
24 professional capacity?

1 A. Yes.

2 Q. Were you aware of John's accepting a
3 position commencing in 2018 on an international
4 level?

5 A. Yes, I was.

6 MR. KINNALLY: Objection, Judge. It's not
7 relevant.

8 THE COURT: Overruled.

9 BY MS. MC DONALD:

10 Q. At any time did you feel that you had
11 the fiduciary responsibility to contact the medical
12 board, the scientific board, the IRB, or any
13 institutional board in regard to my husband's
14 ability to conduct his duties professionally?

15 MR. KINNALLY: Objection, Judge. It's not
16 relevant.

17 THE COURT: Sustained.

18 MS. MC DONALD: It's relevant considering --
19 Your Honor, I would argue that it's relevant
20 considering they're trying to argue that my husband
21 was incapable of managing his affairs when, in fact,
22 my husband was not only capable of managing his own
23 affairs, he was functioning at an extraordinarily
24 high capacity as one of the world's renowned and

1 leading scientists and he was traveling frequently
2 with Dr. Belegu.

3 MR. KINNALLY: I object to the
4 characterization with respect to the marital
5 relationship. Number one, we are not arguing
6 anything here, Judge. What we're arguing is the
7 fact that an order was entered by this Court
8 declaring John Mc Donald, III, to be totally without
9 capacity and a ward of the court. That's a fact.
10 So that is not an argument. That's a fact. It's an
11 order issued by this Court. Thank you.

12 THE COURT: All right. Well, if we're done
13 with questions for this witness and want to resume
14 arguing, we can do that in chambers. I don't know
15 that there's any argument pending. The objection
16 was sustained as to relevance.

17 So if you have any further
18 questions for Dr. Belegu, please ask them so we can
19 get on with this.

20 BY MS. MC DONALD:

21 Q. Did you have the opportunity to witness
22 John and I after our marriage communicating,
23 interacting with each other?

24 A. Yes, I did.

1 Q. Did you ever have any reason for concern
2 regarding the legitimacy or concerns about our
3 marriage?

4 A. No, I did not.

5 MR. KINNALLY: Objection, Judge, assumes a
6 fact not in evidence. It's not relevant.

7 THE COURT: Sustained.

8 BY MS. MC DONALD:

9 Q. Is it your testimony here today that
10 John's wishes were well known amongst yourself and
11 your colleagues to enter into a marriage with me and
12 that subsequent to that marriage he was happily
13 married?

14 MR. KINNALLY: Objection; it's not relevant.

15 THE COURT: Sustained.

16 BY MS. MC DONALD:

17 Q. Did you become aware at some time that
18 John was taking steps in speaking to federal
19 prosecutors and criminal attorneys in regard to his
20 brother Shawn's misrepresentations of him?

21 MR. KINNALLY: Objection, it's not relevant.

22 THE COURT: Sustained.

23 BY MS. MC DONALD:

24 Q. Are you aware of any ongoing

1 investigation of identity theft or any type of
2 criminal actions that are being looked into at this
3 time in a current investigation into Shawn Mc Donald
4 and his misrepresentations of Dr. John Mc Donald?

5 MR. KINNALLY: Objection. It's not relevant.

6 THE COURT: How is this relevant?

7 MS. MC DONALD: It's relevant, Your Honor, in
8 that we have always contended that the
9 guardianship's case was based upon fraudulent
10 documents that were presented to the Court that did
11 not meet the framework of the Court to bring a
12 guardianship case; that my husband was not disabled;
13 and that, in fact, unfortunately since his death,
14 they have now tried to shanghai that guardianship
15 and use that as the basis by which they claim my
16 husband was incapable of being married or, in fact,
17 even caring for himself.

18 My husband, in fact, not only as I
19 stated could not only care for himself, but he was
20 perfectly capable of minding his own affairs and
21 conducting his daily business both personally and
22 professionally. And with -- in all honesty --

23 THE COURT: That sounds like an issue for the
24 guardianship court, which is gone now.

1 MS. MC DONALD: Exactly.

2 THE COURT: All right. Sustained as to
3 relevance.

4 BY MS. MC DONALD:

5 Q. Do you believe that John could not --
6 did you ever have any concerns that John could not
7 conduct his personal affairs?

8 MR. KINNALLY: Objection.

9 THE COURT: Sustained.

10 BY MS. MC DONALD:

11 Q. Do you believe that John was happily
12 married?

13 A. Yes.

14 MR. KINNALLY: Objection, calls for a
15 conclusion with respect to a fact not in evidence at
16 this time.

17 THE COURT: Overruled. The answer can stand.

18 MS. MC DONALD: I didn't hear that.

19 THE COURT: Overruled. The answer stands.

20 Do you have any other questions for
21 the witness?

22 BY MS. MC DONALD:

23 Q. Can you repeat your answer, Dr. Belegu?

24 THE COURT: It stands. Yes, he said.

1 MS. MC DONALD: Okay.

2 BY THE WITNESS:

3 A. Yes.

4 BY MS. MC DONALD:

5 Q. Do you believe that this is a fair
6 proceeding in consideration of what you know of the
7 circumstances surrounding my husband's death?

8 MR. KINNALLY: Objection, Judge.

9 THE COURT: Sustained.

10 MR. KINNALLY: That's totally improper.

11 MS. MC DONALD: Can I ask him if there's
12 anything he would like to say to the Court?

13 THE COURT: No.

14 MS. MC DONALD: Okay.

15 THE COURT: All right. Cross-examination?

16 MR. KINNALLY: Briefly.

17 CROSS-EXAMINATION

18 BY MR. KINNALLY:

19 Q. Dr. Belegu, my name's Patrick Kinnally
20 and I represent the Administrator of John
21 Mc Donald, III's, estate. I've never had the
22 opportunity to meet you. My questions will be
23 brief.

24 A. Okay.

1 Q. Do you know Dr. Nadkarni?

2 A. No, I do not.

3 Q. Do you know that he gave an opinion in
4 this case with respect to John Mc Donald, III's,
5 capacity?

6 A. I do not -- I don't know that he did
7 that, no.

8 Q. Do you know Dr. Greenberg?

9 A. No, I do not.

10 Q. Do you know that he gave an opinion with
11 respect to John Mc Donald's capacity prior to -- or
12 in the guardianship proceeding?

13 A. I know the decisions were rendered, you
14 know, but John didn't discuss the names of the
15 physicians with me so I do not know the names.

16 Q. Do you know Dr. Gonzalez?

17 A. No.

18 Q. Did you know that he gave an opinion and
19 testified in this case, not only in the guardianship
20 case, but this case, with respect to John
21 Mc Donald's capacity?

22 A. So as I stated, you know, these issues I
23 discussed with John, but John never went into the
24 names of the physicians that either he saw or --

1 Q. You've never read their reports --

2 A. Absolutely not.

3 Q. -- of any of these doctors, have you?

4 A. No, absolutely not.

5 Q. They're in a better position with
6 respect to the clinical care that they gave to him;
7 is that a fair statement, Doctor?

8 A. Can you restate the question, please?

9 Q. Yeah. Would you agree with me that
10 Dr. Nadkarni, Dr. Greenberg, and Dr. Gonzalez were
11 in a better position to determine what clinical care
12 or what capacity John Mc Donald had based on their
13 investigation of him?

14 MS. MC DONALD: Objection, Your Honor.

15 MR. KINNALLY: They offered him.

16 MS. MC DONALD: Dr. Belegu has already
17 testified he didn't know who the physicians were
18 and, therefore, it's not --

19 THE COURT: Sustained.

20 MS. MC DONALD: -- not appropriate for him
21 to --

22 MR. KINNALLY: They offered him, Judge. They
23 offered him as a witness on his capacity. It's in
24 their disclosure.

1 THE COURT: Well, you objected to it mostly.

2 MR. KINNALLY: I did.

3 MS. MC DONALD: Your Honor, it would be
4 inappropriate for us to share with another clinical
5 healthcare professional.

6 THE COURT: Well, we don't need any more
7 discussion. Your objection was sustained.

8 MR. KINNALLY: All right.

9 BY MR. KINNALLY:

10 Q. With respect to the order of
11 guardianship in this case, you don't know when it
12 was entered, do you?

13 A. I know when it was granted. Like I
14 said, I spoke to John. He said, I think it was,
15 like about mid to the end of July.

16 Q. So if the order was entered in -- on
17 May 30th, 2017, that would be news to you; is that
18 right?

19 A. It was -- when it was entered?

20 Q. Yes, sir.

21 A. I mean, I don't recall it, so I don't
22 know.

23 Q. You never knew when it was entered?

24 A. When it was entered?

1 Q. Right.

2 A. No, I don't know.

3 Q. You have no familiarity with the
4 guardianship proceeding other than what people have
5 told you; is that a fair statement?

6 A. No, absolutely not. I discussed the
7 issue with John several times.

8 Q. Did you ever attend any of the hearings?

9 A. No.

10 Q. Did you ever read any of the reports of
11 the physicians?

12 A. I believe those -- I can't read those by
13 HIPAA rules.

14 Q. I didn't ask you whether you could or
15 you couldn't. I asked you whether you did, sir.
16 Yes or no.

17 A. It's against the law, so no.

18 Q. Okay. Did you ever talk to the guardian
19 ad litem in the guardianship proceeding?

20 A. Who would that be?

21 Q. I get to ask the questions. You can
22 answer. If you don't know, that's fine.

23 A. I don't know if I've spoken to a person.

24 Q. Do you know a man named Fred Beer?

1 A. No, I don't.

2 Q. Okay. Now, with respect to the marriage
3 ceremony of -- the supposed marriage ceremony
4 between Ms. Mc Donald and John Mc Donald, you were
5 not in attendance, correct?

6 A. I was not, no.

7 Q. You were not there?

8 A. No, I was not.

9 Q. You know of no witnesses to the
10 marriage; is that true?

11 A. No, I do not know of any witnesses to
12 the marriage.

13 MR. KINNALLY: Thank you. That's all I have,
14 Judge.

15 THE COURT: Redirect based on that cross?

16 REDIRECT EXAMINATION

17 BY MS. MC DONALD:

18 Q. At some point did John discuss with you
19 that a guardianship had been entered and if -- and
20 you testified that you thought it was around July.
21 So could it have been that you spoke to him about
22 the guardianship prior to that but you are just not
23 specific as to the specific date that the
24 guardianship was entered?

1 MR. KINNALLY: Judge, I object to that based
2 on hearsay and based on the form of the question.

3 THE COURT: Sustained.

4 BY MS. MC DONALD:

5 Q. At any time did John discuss with you
6 that he was having to be psychologically evaluated
7 by psychiatric healthcare professionals?

8 A. Yes, he did discuss that.

9 Q. Are you aware that Dr. Nadkarni actually
10 indicated that Dr. Mc Donald was not a candidate for
11 guardianship?

12 MR. KINNALLY: Objection, Judge. Now she's
13 going to testify for Dr. Nadkarni.

14 THE COURT: Sustained.

15 BY MS. MC DONALD:

16 Q. Did John ever speak to you about what
17 the findings were of his clinical evaluation with
18 his expert, who is Dr. Nadkarni?

19 MR. KINNALLY: Objection, Judge. That's a
20 hearsay response.

21 THE COURT: Sustained.

22 BY MS. MC DONALD:

23 Q. Were you aware that Dr. Greenberg was --
24 was there ever a discussion regarding Dr. Greenberg

1 evaluating John?

2 A. I don't remember -- I don't recall the
3 name, but John did convey that he was evaluated
4 several times.

5 MR. KINNALLY: Judge, objection.

6 THE COURT: Sustained.

7 BY MS. MC DONALD:

8 Q. Were you aware that -- have you been
9 informed that there is a gentleman by the name of
10 Dr. Ramon Gonzalez?

11 A. I don't know the name.

12 Q. Okay. Was -- did John ever discuss with
13 you that a doctor who he had never seen wrote a
14 physician's note on behalf of Shawn to the Court?

15 MR. KINNALLY: Objection, Judge, calls for a
16 hearsay response.

17 THE COURT: Overruled.

18 BY THE WITNESS:

19 A. Yes, John was livid about that.

20 BY MS. MC DONALD:

21 Q. To your knowledge, did John -- was John
22 seeking to report that to the Illinois medical
23 board?

24 MR. KINNALLY: Objection. It's not relevant.

1 THE COURT: Sustained.

2 BY MS. MC DONALD:

3 Q. Was this medical physician's note one of
4 the pillars that was used to bring the guardianship
5 case --

6 MR. KINNALLY: Objection, Judge.

7 BY MS. MC DONALD:

8 Q. -- against John, to your knowledge?

9 MR. KINNALLY: He's not in a position to
10 answer that question.

11 THE COURT: Sustained.

12 Any other redirect based on what
13 was brought out on cross-examination?

14 BY MS. MC DONALD:

15 Q. Do you believe that I am the rightful
16 heir to John Mc Donald's estate?

17 MR. KINNALLY: Objection, Judge. That's not
18 his decision to make.

19 THE COURT: Sustained.

20 MS. MC DONALD: I have no further questions,
21 Your Honor.

22 THE COURT: Okay. Thank you, Doctor. You
23 may step down.

24 THE WITNESS: Thank you.

1 THE COURT: All right. We'll take a
2 15-minute break, resume at 11:25.

3 (Recess taken.)

4 THE COURT: Okay. You may call your next
5 witness, Ms. Mc Donald.

6 MS. MC DONALD: I would like to call Mr. Ray
7 Bement, Your Honor.

8 THE COURT: Mr. Bement, if you approach the
9 clerk, the clerk will administer the oath.

10 (Witness sworn.)

11 THE COURT: Okay.

12 MR. KINNALLY: Judge, before he begins, I
13 would like to be heard on this witness with your
14 permission.

15 THE COURT: Is it brief or long?

16 MR. KINNALLY: It's very brief.

17 THE COURT: Okay. Could I have -- Mr.
18 Bement, could I have you sit outside for a moment
19 and we'll call you back.

20 THE WITNESS: Okay. Sure.

21 THE COURT: You've been sworn.

22 MR. KINNALLY: I would like these witnesses
23 excluded, Judge, as well.

24 THE COURT: They have testified.

1 MR. KINNALLY: I don't know if they're going
2 to be recalled.

3 THE COURT: That's true. Are they on your
4 witness list?

5 MR. KINNALLY: They are not.

6 THE COURT: Okay. And --

7 MR. KINNALLY: Shawn is my client.

8 THE COURT: They were already here. Okay.
9 All right.

10 Could I have you wait outside until
11 further notice?

12 You may be seated. You can address
13 me from there.

14 MR. KINNALLY: Okay. I brought the issue of
15 Mr. Bement's testimony up last Wednesday. Here's
16 the transcript.

17 (Handed to Judge.)

18 MR. KINNALLY: So the issue at that time was
19 the affidavit, and the argument that I made at that
20 time you indicated you would reserve until today's
21 date because the argument that I made in my reply to
22 the motion in limine that I filed was the
23 inconsistencies in Mr. Bement's affidavit as opposed
24 to his deposition. Specifically on page 2 of the

1 reply that I filed on November 4th, I outlined those
2 inconsistencies on pages 36, 53, 51, 47, 49, 61, 45,
3 66, and other pages with respect to the deposition
4 that he gave. So I would like to voir dire this
5 witness before they start review of that.

6 THE COURT: You mean as far as the
7 deposition?

8 MR. KINNALLY: As far as his affidavit,
9 Judge.

10 THE COURT: A discovery deposition or in --

11 MR. KINNALLY: I'm going to use the affidavit
12 and I may use the deposition. Otherwise I can wait
13 until --

14 THE COURT: No, I mean, you're wanting to
15 voir dire this witness here in court?

16 MR. KINNALLY: I do.

17 THE COURT: Before he testifies?

18 MR. KINNALLY: Based on the affidavit that
19 was filed and given to you last Wednesday.

20 THE COURT: And why would --

21 MR. KINNALLY: The reason is because of the
22 inconsistencies that I outlined in the affidavit
23 with respect to his prior sworn testimony and in
24 view of the notary that was on the affidavit that

1 was submitted to the Court that came from the State
2 of New York.

3 THE COURT: And to what purpose -- if you
4 complete that voir dire, what do you anticipate
5 doing?

6 MR. KINNALLY: Well, I don't know. I don't
7 know what he's going to say. I don't know what
8 the -- I want to know the circumstances under which
9 the affidavit was made because I believe, as I
10 argued last Wednesday, that he either lied at his
11 deposition and perjured himself or this affidavit is
12 a fraud on the Court.

13 MS. MC DONALD: Your Honor, I object to this
14 in regard to this is as if you're throwing out a
15 broad net on a fishing expedition when, in fact, a
16 notary, when they sign a document, is attesting to
17 the fact that the person before them is the person
18 signing the document. They're not attesting to the
19 veracity of the document. A notary is a notary and
20 valid whether it is in the State of New York,
21 Oklahoma, and as I stated on Thursday, or in the
22 U.S. Consulate's office in Sydney.

23 Furthermore, in regard to your
24 statements that Mr. Bement's testimony is

1 inconsistent, there were several instances whereby
2 you have cherry-picked Mr. Bement's testimony and
3 taken it out of context, and I believe that
4 Mr. Bement should be afforded the opportunity to
5 qualify his statements in context to which they were
6 being made.

7 THE COURT: That's kind of the purpose he's
8 asking for --

9 MS. MC DONALD: Yeah.

10 THE COURT: -- is for clarification. He's
11 asking to voir dire, in other words, to question the
12 witness as to the inconsistencies and maybe give him
13 an opportunity to clarify that.

14 MS. MC DONALD: I object to that, Your Honor.
15 He had sufficient time to call Mr. Bement back for
16 another deposition. In fact, he had subpoenaed
17 Mr. Bement for a deposition before and canceled.

18 THE COURT: Objection is overruled. I'll
19 allow the voir dire on a limited basis to precede
20 the direct questioning of plaintiff -- or of
21 Petitioner as her witness in her case in chief.

22 So you may call back -- bailiff, if
23 you'll call back Mr. Bement, we'll limit that to
24 15 minutes.

1 MR. KINNALLY: Oh, I don't think it will be
2 that long, Judge, but I appreciate that time.

3 THE COURT: All right.

4 THE BAILIFF: Are the other witnesses allowed
5 back?

6 THE COURT: No.

7 THE BAILIFF: Okay.

8 THE WITNESS: Am I still sworn in?

9 THE COURT: Yes. Would you state your name,
10 address, and occupation for the record and spell
11 your first and last name?

12 THE WITNESS: Yeah, it's Ray, R-a-y, Bement,
13 B-e-m-e-n-t. And you asked for my address?

14 THE COURT: Address and occupation, yes.

15 THE WITNESS: 1005 North Randolph, Champaign,
16 Illinois 60120. And my occupation is I'm a licensed
17 clinical social worker in the state of Illinois.

18 THE COURT: All right. Thank you.

19 THE WITNESS: Uh-huh.

20 THE COURT: We are going to proceed with
21 questions at this time, first from Mr. Kinnally and
22 then from Ms. Mc Donald, and this will be on a
23 limited basis with regard to your affidavit and your
24 deposition testimony.

1 THE WITNESS: Okay.

2 MR. KINNALLY: Can I approach, Judge?

3 THE COURT: You may approach.

4 (Witness previously
5 sworn.)

6 RAY BEMENT

7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 VOIR DIRE EXAMINATION

10 BY MR. KINNALLY:

11 Q. Mr. Bement, my name's Pat Kinnally. You
12 were in my office on July 3rd, 2019; is that right?

13 A. Yes.

14 Q. You gave a deposition. Do you remember
15 that?

16 A. Oh, I remember that, uh-huh.

17 Q. Nice to see you again.

18 THE COURT: You handed him what document?

19 MR. KINNALLY: I handed him, with your
20 permission, Bement Exhibit No. 1, which is an
21 affidavit for Raymond C. Bement which is undated and
22 was filed with this Court on October 30th, 2019, as
23 part of a response to motion in limine by Ellizzette
24 Mc Donald.

1 THE COURT: All right.

2 BY MR. KINNALLY:

3 Q. So, Mr. Bement, when did you sign this
4 document?

5 A. It was the -- it was on a Friday. It
6 was on a Friday.

7 Q. Where did you sign it?

8 A. In Brooklyn.

9 Q. Brooklyn, where?

10 A. New York.

11 Q. Okay. And what were you doing in
12 Brooklyn?

13 A. I'd rather not say, if that's okay.

14 Q. Were you there to see a notary public?

15 A. Well, for this particular document, yes,
16 but that wasn't my main goal for being in Brooklyn.

17 Q. Why were you in Brooklyn?

18 A. I would rather not say.

19 MS. MC DONALD: I object, Your Honor.

20 BY THE WITNESS:

21 A. I was on a date and I would rather not
22 put that in the record --

23 BY MR. KINNALLY:

24 Q. Okay. That's fine.

1 A. -- to be honest with you.

2 MS. MC DONALD: It's not foundational too.

3 THE COURT: Overruled.

4 MS. MC DONALD: The reason Mr. Bement was in
5 Brooklyn --

6 THE COURT: Overruled.

7 BY MR. KINNALLY:

8 Q. Who prepared the document?

9 A. I prepared the document.

10 Q. Where?

11 A. In Champaign. I took the document with
12 me.

13 Q. So when did you prepare the document?

14 Please, sir, just answer the
15 question. You don't have to be argumentative?

16 A. No, I sat through a deposition with you
17 and you called me a liar, sir.

18 Q. We'll get to that.

19 A. You called me a liar. You called my
20 whole --

21 THE COURT: Sir.

22 MS. MC DONALD: Objection.

23 THE WITNESS: This is really emotional. I'm
24 sorry. It's very emotional.

1 THE COURT: Do you need to take a break? We
2 have only just started.

3 THE WITNESS: No, we've all had breaks all
4 day.

5 THE COURT: Are you ready to go then?

6 THE WITNESS: Oh, sure.

7 THE COURT: Well, listen to the question and
8 respond to the question.

9 BY MR. KINNALLY:

10 Q. So you prepared this affidavit?

11 A. Yes, sir.

12 Q. Alone or with somebody else?

13 A. By myself first and then I edited it.

14 Q. Who did you give it to?

15 A. A friend to check my spelling.

16 Q. Okay. Who was that?

17 A. A friend that I work with.

18 Q. Okay. What's the person's name?

19 A. Christine Mc Donald.

20 Q. Okay. Did you provide this affidavit to
21 Ms. Mc Donald?

22 A. Yeah, because I had to get it signed.

23 Q. Why did you create it? Tell the Judge.

24 A. I created the document because --

1 MS. MC DONALD: Objection, Your Honor.
2 This -- it's been established that Mr. Bement
3 submitted the document and that it is his
4 testimony -- that the statements in the document are
5 his and that he signed to the veracity of the
6 document.

7 THE COURT: Overruled.

8 You may answer.

9 BY THE WITNESS:

10 A. I created the document because I went
11 back over my deposition and I realized that I wasn't
12 really that accurate, but I wasn't asked really
13 specific questions so I thought I would should flush
14 out my deposition.

15 BY MR. KINNALLY:

16 Q. Who asked you to create this document?

17 A. No one asked me to create it.

18 Q. So you -- you're telling this Court that
19 you went back and read your deposition and you felt
20 that you had to correct it and create an affidavit
21 to be filed in this court? Is that your testimony?

22 A. No, what I did -- okay. You're rolling
23 your eyes at me like I'm lying.

24 Q. I'm not rolling my eyes. I turned to

1 look back at my client.

2 A. I saw exactly what you did. You did
3 this during the deposition.

4 Q. Don't tell me that. Please just speak
5 to the Judge.

6 THE COURT: Yes, if you have any problems,
7 you can talk to me. No back and forth. Just answer
8 the questions.

9 MS. MC DONALD: Can I ask a question, Your
10 Honor, so we can move --

11 THE COURT: I don't think we need
12 suggestions. All we need is answers to questions.
13 If there's a good objection to a question --

14 MS. MC DONALD: I concur.

15 THE COURT: -- then bring it up.

16 MS. MC DONALD: I was going to suggest to
17 perhaps let Mr. Bement know that, if you could just
18 respond to Mr. Kinnally's questions to the Judge,
19 and I concur with the Judge.

20 THE WITNESS: That's not what I meant.

21 MR. KINNALLY: Could we read the question
22 back, Judge?

23 THE COURT: All right. Is there a question
24 pending?

1 MR. KINNALLY: There was.

2 THE COURT: All right. Could we go back to
3 that question that was pending.

4 (Question read.)

5 BY THE WITNESS:

6 A. What I did was I went back and looked at
7 my deposition, yes, and I had received a letter that
8 I was not going to be subpoenaed or I was -- I was
9 not going to be needed for this trial and I couldn't
10 understand why I wouldn't be needed for the trial.
11 So I went back to read the deposition and I thought
12 maybe I was too general, so I went back to look at
13 my facts and create a timeline because I didn't
14 supply one during the deposition. I wasn't asked
15 for one and I thought it was a hole in it.

16 THE COURT: All right. Next question.

17 BY MR. KINNALLY:

18 Q. So you're here under a subpoena today?

19 A. No.

20 Q. So in your affidavit, it's your
21 testimony before this Court in paragraph 8 that you
22 signed the marriage license and the certificate in
23 the dining room of the Paris home; is that right?
24 Is that your testimony now?

1 A. Yes.

2 Q. And it's your testimony before this
3 Court today and in this affidavit that you read the
4 vows with respect to John and Ellizzette Mc Donald
5 in Edgar County? Is that your testimony before this
6 Court?

7 A. In their living room, yes.

8 Q. That's your testimony today and the
9 testimony in this affidavit? You're clear about
10 that?

11 A. Yes.

12 MR. KINNALLY: Okay. That's all I have.
13 Thank you, Judge.

14 THE COURT: Thank you. Any questions about
15 those matters that have been asked in this voir
16 dire? Just Mr. Kinnally's questions and his
17 answers? Unless you're going to cover them in your
18 general questions to him.

19 MS. MC DONALD: I'm going to cover them in my
20 general questions.

21 THE COURT: All right. Then you may proceed.
22 Go ahead.

23 DIRECT EXAMINATION

24 BY MS. MC DONALD:

1 Q. Mr. Bement, may I refer to you as Ray?

2 A. Yes.

3 Q. How long have you known me,
4 approximately?

5 A. Since 1982.

6 Q. And how long did you know John?

7 A. The same amount of time.

8 Q. Since that time, were you aware of a
9 relationship between John and myself?

10 A. Yes.

11 Q. Was this something that was known
12 amongst your other friends?

13 A. Yes.

14 Q. After you graduated from the University
15 of Illinois and we all went our separate ways, did
16 you have the opportunity to interact with myself or
17 John?

18 A. Yes.

19 Q. And how frequently would you say that
20 was?

21 A. It was --

22 MR. KINNALLY: Foundation, objection. I
23 don't know when he graduated, Judge.

24 THE COURT: Sustained. Time and place.

1 BY MS. MC DONALD:

2 Q. So after mid 1980 at the University of
3 Illinois, Urbana-Champaign, did you have the
4 opportunity after the mid 1980s to interact with or
5 speak to John or myself?

6 A. Yes.

7 Q. And were you aware at that time that
8 there was still an ongoing relationship?

9 MR. KINNALLY: Objection, Judge. Again,
10 foundation. Originally it was '82, now we're back
11 to 1980.

12 MS. MC DONALD: I said 1985 is when we
13 graduated, '84, '85. He indicated that he first met
14 us in 1981, '82.

15 THE COURT: Okay. What transaction are you
16 referring to now and when was it?

17 MS. MC DONALD: Transaction?

18 THE COURT: Awareness. You said, "Were you
19 aware."

20 MS. MC DONALD: I want to establish the fact
21 that Ray --

22 THE COURT: Ask the questions but first set
23 the time frame.

24

1 BY MS. MC DONALD:

2 Q. So, Ray, so you -- were you aware after
3 19 -- the mid 1980s, when we all graduated, that
4 John and I continued a relationship?

5 MR. KINNALLY: Objection, Judge. It's a
6 leading question.

7 THE COURT: Sustained.

8 MR. KINNALLY: Assumes a fact not in evidence
9 as to people graduating.

10 THE COURT: Sustained.

11 BY MS. MC DONALD:

12 Q. Were you aware of me being in a
13 relationship with John after 1985?

14 A. Yes.

15 Q. Were you aware of John being in a
16 relationship with me after 1985?

17 A. Yes.

18 Q. Were you aware of me continuing that
19 relationship with John into 1990, when John was
20 working in St. Louis?

21 MR. KINNALLY: Objection, leading.

22 THE COURT: Sustained.

23 BY MS. MC DONALD:

24 Q. In 1990, were you aware that I was

1 continuing a relationship with John?

2 MR. KINNALLY: Same objection.

3 THE COURT: Sustained.

4 BY MS. MC DONALD:

5 Q. Were you aware that John was -- had
6 ultimately moved to St. Louis?

7 A. Yes.

8 Q. During that time that John was living in
9 St. Louis, were you aware of a relationship that I
10 was having with John?

11 MR. KINNALLY: Objection, foundation. I
12 don't know when he moved to St. Louis. The witness
13 hasn't said it either.

14 THE COURT: Sustained.

15 MS. MC DONALD: I'm sorry?

16 THE COURT: Sustained.

17 BY MS. MC DONALD:

18 Q. There came a point in -- between 2014,
19 2015, 2016, 2017 when I was spending more time in
20 Illinois, in the Midwest. Are you aware of that?

21 MR. KINNALLY: Objection. The witness is now
22 testifying.

23 THE COURT: Sustained.

24

1 BY MS. MC DONALD:

2 Q. To the best of your recollection, when
3 was the first time in recent years that we
4 reconnected and were in --

5 A. 2015 with you, yes.

6 Q. And at that time, had I communicated
7 with you being in a relationship with John?

8 MR. KINNALLY: Objection. She's testifying.

9 THE COURT: Sustained.

10 BY MS. MC DONALD:

11 Q. Did you know if I was in a relationship?

12 A. Yes.

13 Q. And who was I in that relationship with?

14 MR. KINNALLY: Objection. She's testifying
15 again.

16 THE COURT: Overruled.

17 BY MS. MC DONALD:

18 Q. You can answer.

19 THE WITNESS: So I should answer?

20 THE COURT: Go ahead.

21 THE WITNESS: I'm sorry. I'm confused.

22 THE COURT: If I sustain the objection, you
23 don't answer. If I overrule it, you can answer. Go
24 ahead and answer it.

1 BY THE WITNESS:

2 A. Okay. God --

3 BY MS. MC DONALD:

4 Q. So the question was, who was I in a --

5 THE COURT: Wait, wait. Okay. If there's --
6 do you know what the question was?

7 THE WITNESS: No, I lost it.

8 THE COURT: All right. Can I have the court
9 reporter read back the question?

10 (Question read.)

11 BY THE WITNESS:

12 A. I'm not sure at that time. I'm not
13 sure.

14 THE COURT: All right. Next question.

15 MS. MC DONALD: Your Honor, I think --

16 THE COURT: Next question. Can we get to the
17 wedding, the marriage, et cetera?

18 MS. MC DONALD: Yes.

19 THE COURT: Because I think some of this
20 previous stuff has already been talked about as
21 being irrelevant.

22 MS. MC DONALD: I would like to establish
23 that Mr. Bement had a lengthy history of friendship
24 on a professional and a personal level with my

1 husband and I, that -- that he -- given that, he
2 also had an opinion as to how substantial our
3 relationship was.

4 MR. KINNALLY: Judge, I object to her
5 testifying again.

6 THE COURT: You don't want to stipulate to
7 that statement?

8 MR. KINNALLY: I do not.

9 THE COURT: Okay. Yes, don't tell me what
10 you want to establish, just establish it with this
11 witness, if you can.

12 BY MS. MC DONALD:

13 Q. Is it your opinion that John and I were
14 in a relationship over a period of years, if not
15 decades?

16 MR. KINNALLY: Objection. It's not relevant.

17 THE COURT: Sustained.

18 BY MS. MC DONALD:

19 Q. In 2017, did you become aware that John
20 and I were engaged?

21 A. Yes.

22 Q. And how did you become aware of that?

23 A. John called me on the phone and told me.

24 MR. KINNALLY: Objection, move to strike.

1 Calls for a hearsay response.

2 MS. MC DONALD: Your Honor, Mr. Bement needs
3 to be able to tell the Court when --

4 THE COURT: Overruled. The answer would
5 stand as an exception to hearsay; intent.

6 Go ahead.

7 BY MS. MC DONALD:

8 Q. And did John at that time ask you to
9 marry us or did that come later?

10 MR. KINNALLY: Same objection.

11 THE COURT: Sustained.

12 BY MS. MC DONALD:

13 Q. Did you participate in preparations for
14 a marriage ceremony between John and myself?

15 A. Yes.

16 Q. Were the preparations for that marriage
17 ceremony -- did they commence in March, April, and
18 May of 2017?

19 MR. KINNALLY: Objection. It's a leading
20 question.

21 THE COURT: Sustained.

22 BY MS. MC DONALD:

23 Q. Did you help us prepare for a marriage
24 ceremony in April of 2017 in terms of the

1 preparation?

2 MR. KINNALLY: Same objection.

3 THE COURT: Sustained.

4 Can you just ask him what he did so
5 he can answer and not adopt your words?

6 MS. MC DONALD: Sure. Right.

7 THE COURT: No, ask him something.

8 BY MS. MC DONALD:

9 Q. Can you tell the Court what you did to
10 prepare John and I for marriage?

11 A. Over the period of, I would say, two,
12 three months, we were social with one another and
13 our conversations led to discussions about
14 relationship. And we began to talk about what it
15 meant to be in a relationship. I was breaking up
16 with someone and so the conversation just kind of
17 morphed around being middle-aged and being in a
18 relationship. And so we began having conversations
19 about what it meant to be in a relationship in our
20 50s.

21 Q. At any point did we sit down with you
22 and go through some of the questions that are
23 required in the Jewish faith, according to the
24 rabbinical law, in order for you to determine

1 whether or not you would marry us?

2 MR. KINNALLY: Objection. It's a leading
3 question.

4 THE COURT: Sustained.

5 BY MS. MC DONALD:

6 Q. At any time did you sit down -- at any
7 point did you go through a series of questions with
8 John and I to prepare for -- to determine whether or
9 not you would marry us?

10 A. Yes.

11 Q. And did there come a point that you
12 determined based upon your own morale and beliefs in
13 keeping with the rules -- our religious faith that
14 you felt comfortable in marrying John and myself?

15 MR. KINNALLY: Objection, Judge.

16 THE COURT: Sustained. Leading again.

17 BY MS. MC DONALD:

18 Q. Okay. I want -- if I may digress.

19 Mr. Bement, were you familiar that
20 John was in litigation regarding his brother filing
21 for a plenary guardianship over him?

22 A. No.

23 Q. You weren't aware that John was involved
24 in a litigation for -- that his brother had filed a

1 guardianship case against him?

2 MR. KINNALLY: Objection, Judge. It's asked
3 and answered.

4 THE COURT: Sustained.

5 BY MS. MC DONALD:

6 Q. Do you know what a plenary guardianship
7 is?

8 MR. KINNALLY: Objection. It is not
9 relevant.

10 MS. MC DONALD: It is relevant because
11 opposing counsel contends that my husband was under
12 a plenary guardianship. And, in fact, as we've
13 already established, as Your Honor has stated, this
14 is a matter for the guardianship court, but the
15 plenary guardianship was something that Mr. Bement
16 can speak to not only professionally but personally.

17 THE COURT: Sustained.

18 THE WITNESS: So does that mean I answer
19 that?

20 THE COURT: That means you don't answer.

21 THE WITNESS: I don't answer. Okay. Thank
22 you.

23 BY MS. MC DONALD:

24 Q. Do you know who Shawn Mc Donald is?

1 MR. KINNALLY: Objection. It's not relevant.

2 MS. MC DONALD: It is relevant because he's
3 the one who is bringing the case.

4 MR. KINNALLY: Judge, we're not bringing a
5 case.

6 THE COURT: Sustained.

7 BY MS. MC DONALD:

8 Q. Were you aware that a guardianship had
9 been granted to Shawn Mc Donald over John Mc Donald
10 in absentia?

11 MR. KINNALLY: Objection, Judge, asked and
12 answered. He said he was unaware of the
13 guardianship.

14 THE COURT: Sustained.

15 BY MS. MC DONALD:

16 Q. Were you aware of a guardianship over
17 John Mc Donald?

18 MR. KINNALLY: Objection.

19 THE COURT: Sustained.

20 BY MS. MC DONALD:

21 Q. Did you ever attend court where John
22 Mc Donald appeared with his attorney in a
23 guardianship proceeding?

24 MR. KINNALLY: Objection.

1 THE COURT: Sustained.

2 MS. MC DONALD: Your Honor, Mr. Bement
3 clearly appeared in the guardianship court with my
4 husband; and, in fact, I do believe he misunderstood
5 the question before because clearly Mr. Bement --

6 THE COURT: Wait a minute. No more
7 testifying. You're asking the questions for this
8 witness's testimony.

9 MS. MC DONALD: Does he have an opportunity
10 if he misunderstood the question to change his
11 answer or to qualify his answer? Because it's very
12 clear that he did not understand the question
13 because --

14 THE COURT: You're testifying. You continue
15 to testify. If you want me to just suspend this?
16 Ask another question and let's get to the wedding,
17 if that's what you're getting to.

18 BY MS. MC DONALD:

19 Q. So on July 11th, did you perform a
20 wedding ceremony?

21 A. Yes.

22 Q. And did you sign a wedding certificate
23 for John Mc Donald and myself?

24 A. Yes.

1 Q. After we signed the wedding certificate,
2 did we leave to go to Allerton Park?

3 THE COURT: Can you --

4 MR. KINNALLY: Objection, Judge.

5 THE COURT: -- not lead him. Ask him what
6 happened next if that's --

7 BY MS. MC DONALD:

8 Q. Okay. What happened next?

9 THE COURT: All right.

10 MS. MC DONALD: Sorry.

11 BY THE WITNESS:

12 A. Okay. I signed the certificate in the
13 kitchen, on the kitchen table. Both of them went in
14 and changed clothes. We agreed to meet in Champaign
15 and then proceeded to Allerton Park.

16 MR. KINNALLY: I didn't hear that. Pardon
17 me?

18 THE WITNESS: We proceeded to Allerton Park
19 after that.

20 MR. KINNALLY: Thank you, sir.

21 THE COURT: Next question.

22 BY MS. MC DONALD:

23 Q. At Allerton Park, were there any
24 additional activities regarding the ceremony

1 performed? Was there a religious portion?

2 A. Yeah. It was more secular at Allerton
3 Park, yes.

4 THE COURT: Could you read back the answer.

5 (Answer read.)

6 BY MS. MC DONALD:

7 Q. The night before you performed a
8 marriage ceremony at our home in Paris, Illinois,
9 did you, in keeping with the Jewish faith, attend
10 our home for a Ketubah signing?

11 MR. KINNALLY: Objection. It's a leading
12 question.

13 THE COURT: Sustained.

14 BY MS. MC DONALD:

15 Q. Did you sign a Ketubah on July 10th?

16 A. Yes.

17 Q. And could you, for the Court, explain
18 what a Ketubah is?

19 MR. KINNALLY: Objection, Judge. It's
20 irrelevant. It does not matter whether they had a
21 religious ceremony or not in the State of Illinois.
22 It's irrelevant.

23 THE COURT: Overruled. I'll let him answer,
24 if he knows.

1 Do you know?

2 BY THE WITNESS:

3 A. The Ketubah is the -- like what
4 Christians would call a marriage license, meaning
5 what one party's bringing to the relationship; and
6 what the other party's bringing to the relationship,
7 and it's done on a very formal piece of parchment,
8 usually lambskin. It's very beautiful, actually.

9 BY MS. MC DONALD:

10 Q. After we were married, did you have the
11 opportunity to interact with John and myself?

12 A. Yes.

13 Q. And was that on a professional basis, a
14 personal basis, or both?

15 A. Both, I would say.

16 Q. Professionally, could you tell the Court
17 what we were engaged in?

18 MR. KINNALLY: Objection, Judge. How is this
19 relevant to anything we're doing here?

20 MS. MC DONALD: It goes to my husband's state
21 of mind and his ability to function, again, at a
22 high capacity and be not only cognizant of --

23 THE COURT: Sustained.
24

1 BY MS. MC DONALD:

2 Q. Were you involved in a project that
3 included my husband and myself and the NFL, the NHL,
4 and various other elite sports teams with the Human
5 Connectome Project after you performed our marriage
6 ceremony?

7 MR. KINNALLY: Objection. It's not relevant,
8 Judge.

9 THE COURT: Sustained.

10 BY MS. MC DONALD:

11 Q. Was John, in your opinion, deemed
12 disabled?

13 MR. KINNALLY: Objection, Judge, calls for a
14 conclusion.

15 THE COURT: Sustained.

16 BY MS. MC DONALD:

17 Q. Do you believe John was suicidal?

18 MR. KINNALLY: Objection.

19 THE COURT: Sustained.

20 BY MS. MC DONALD:

21 Q. Do you believe John was homicidal?

22 MR. KINNALLY: Objection.

23 THE COURT: Sustained.

24

1 BY MS. MC DONALD:

2 Q. Do you believe that John was incapable
3 of caring for himself?

4 MR. KINNALLY: Objection.

5 THE COURT: Sustained.

6 BY MS. MC DONALD:

7 Q. Is it your opinion that John was happily
8 married?

9 MR. KINNALLY: Objection, Judge. It's
10 irrelevant.

11 THE COURT: Sustained.

12 BY MS. MC DONALD:

13 Q. Is it your opinion that John was seeking
14 to be emancipated from family?

15 MR. KINNALLY: Objection, Judge.

16 THE COURT: Sustained.

17 BY MS. MC DONALD:

18 Q. Are you aware of criminal activity
19 towards John that involved his brother?

20 MR. KINNALLY: Objection. It's irrelevant.

21 THE COURT: Sustained.

22 BY MS. MC DONALD:

23 Q. At any time did you feel, based upon
24 your professional licensure, to report concern -- or

1 to report any concerns?

2 MR. KINNALLY: Objection, foundation,
3 irrelevant.

4 THE COURT: Sustained.

5 BY MS. MC DONALD:

6 Q. Were you ever in fear?

7 MR. KINNALLY: Objection, irrelevant.

8 THE COURT: Sustained.

9 BY MS. MC DONALD:

10 Q. Were you ever in fear for John?

11 MR. KINNALLY: Objection, irrelevant.

12 MS. MC DONALD: It's not irrelevant.

13 THE COURT: Sustained.

14 BY MS. MC DONALD:

15 Q. Do you believe that John needed a
16 guardian?

17 MR. KINNALLY: Objection, irrelevant.

18 THE COURT: Sustained.

19 MS. MC DONALD: It's not irrelevant.

20 Mr. Bement works in the capacity and part of his
21 principal role is to work in a capacity assessing
22 guardianships.

23 THE COURT: All right. Well, I'm not going
24 to allow that, so if there are no other questions

1 that are relevant, probably to just the ceremony
2 itself or relevant to that ceremony, then you're
3 probably done with your questions.

4 MS. MC DONALD: It's not --

5 THE COURT: All right. Anything further?

6 MS. MC DONALD: I defer to you, Your Honor.

7 THE COURT: Don't defer to me. Do you have
8 any other questions that might be relevant to the
9 ceremony?

10 MS. MC DONALD: Your Honor, there are many
11 things that are relevant to the ceremony and to my
12 relationship, but, again, as I expressed earlier,
13 this isn't my bailiwick and I don't know that
14 Mr. Bement should be here during this, but the role
15 of the Court I thought was to seek the truth and the
16 truth --

17 THE COURT: Yes, you're correct. He
18 shouldn't be here while we are talking like this.
19 We're getting into the cross-examination next, so
20 let's get done with that and then we can go to
21 lunch.

22 MR. KINNALLY: Okay. Do you want me to go?

23 THE COURT: It's a little after 12:00. How
24 much time do you --

1 MR. KINNALLY: It's going to take a while.

2 THE COURT: All right. Let's resume at
3 1:00 o'clock.

4 MR. KINNALLY: That's fine. I have one
5 witness coming at 1:30. I don't know if we'll need
6 him, but I want to alert the Court. I don't want to
7 interrupt their case.

8 THE COURT: Let's come back at 12:45 then.
9 That's a little over half an hour, if you can all do
10 that in that time.

11 And, in the meantime, I'm going to
12 instruct the witness, please don't talk about your
13 testimony with anyone between now and coming back at
14 12:45.

15 MS. MC DONALD: Your Honor --

16 THE COURT: You'll still be under --

17 THE WITNESS: I can sit here? Can I sit here
18 in the room?

19 THE COURT: Well, you can sit outside the
20 room, but I think they're probably going to lock the
21 door for half an hour.

22 THE WITNESS: I don't have anywhere else to
23 be.

24 MS. MC DONALD: Your Honor, in consideration

1 of the fact that I may, in fact, need to leave
2 today, I actually would like to continue to proceed,
3 also so that Mr. Bement can leave.

4 THE COURT: We're not going through lunch, if
5 that's what you're asking. The staff should have a
6 chance to get some lunch.

7 MS. MC DONALD: All right.

8 THE COURT: All right. So let's come back at
9 quarter to 1:00.

10 (Recess taken.)

11 THE COURT: Okay. Your previous two
12 witnesses, do you intend to call them again?

13 MS. MC DONALD: Yes.

14 THE COURT: You do? All right. Then they
15 have to be excluded until they're done testifying.

16 MS. MC DONALD: All right.

17 THE COURT: Okay.

18 MS. MC DONALD: I'm not -- to qualify, I'm
19 not sure but --

20 THE COURT: I understand, but you may.

21 MS. MC DONALD: I may.

22 THE COURT: Okay. All right. Then when we
23 left for lunch, Mr. Bement was on the witness stand.

24 So, if you would resume that seat

1 again, Mr. Bement.

2 (Witness complies.)

3 THE COURT: You're still under oath.

4 THE WITNESS: Yes.

5 THE COURT: You may proceed with cross,
6 Mr. Kinnally.

7 CROSS-EXAMINATION

8 BY MR. KINNALLY:

9 Q. Mr. Bement, it's my understanding that
10 you hold licenses in the State of Illinois in
11 cosmetology and also as a behavioral social worker;
12 is that right?

13 A. No, that is incorrect.

14 Q. Okay. What are your licenses in, then?

15 A. I'm a licensed clinical social worker
16 only.

17 Q. You were a licensed cosmetologist at one
18 point?

19 A. Yes.

20 Q. Okay. And it's my understanding, also,
21 that you had very little contact between yourself
22 and John Mc Donald, III, and Ellizzette Mc Donald
23 between the years of 2000 and 2016; is that right?

24 A. What did you say?

1 MR. KINNALLY: Can she read it back?

2 THE COURT: Yes. Go ahead.

3 (Question read.)

4 BY THE WITNESS:

5 A. Yeah.

6 BY MR. KINNALLY:

7 Q. Okay.

8 A. Yes.

9 Q. And it was your idea to be the officiant
10 at this ceremony --

11 MS. MC DONALD: Objection, Your Honor, in the
12 form of the question.

13 MR. KINNALLY: This is cross, Judge.

14 MS. MC DONALD: It was not Mr. Bement's idea.

15 THE COURT: This is cross-examination, so
16 unlike under direct examination, he can lead the
17 witness. So overruled.

18 MR. KINNALLY: Could she read it back, Judge,
19 please?

20 THE COURT: Go ahead, Madam Court Reporter.

21 (Question read.)

22 BY THE WITNESS:

23 A. Yes.

24

1 BY MR. KINNALLY:

2 Q. Okay. And in order to do that, you
3 obtained a certificate from the Universal Life
4 Church Ministry; is that right?

5 A. That's correct, uh-huh.

6 Q. That was an online --

7 A. Yes.

8 Q. -- event?

9 Took about 5 to 10 minutes?

10 A. Yes.

11 Q. And the marriage ceremony, as you
12 testified on direct, the secular marriage ceremony
13 was conducted in Piatt County; is that a fair
14 statement?

15 A. Yes.

16 Q. Okay.

17 MS. MC DONALD: Sorry. Could you repeat
18 that? I didn't hear it. It's hard to hear back
19 here. I'm sorry.

20 MR. KINNALLY: Do you want to read that back,
21 Judge?

22 THE COURT: Okay. Madam Court Reporter,
23 could you read it back, please?

24 (Question read.)

1 MR. KINNALLY: Can I go ahead, Judge?

2 THE COURT: Go ahead, yes.

3 MS. MC DONALD: Objection, Your Honor.

4 Mr. Bement also testified earlier that he performed
5 a marriage ceremony at our home in Paris.

6 MR. KINNALLY: His testimony according to my
7 notes was that the secular part of the marriage was
8 conducted in Piatt County. That's what he testified
9 to.

10 THE COURT: All right. You'll be able to
11 redirect questions, so overruled.

12 BY MR. KINNALLY:

13 Q. And prior to conducting that marriage
14 ceremony, you never knew a person named Ellizzette
15 Duvall Minnicelli; is that a fair statement, sir?

16 MS. MC DONALD: Objection, Your Honor.

17 Mr. Bement has already testified that he has known
18 me since 19 -- I believe it was '81, '82. Again, we
19 would have to refer to the record.

20 THE COURT: I understand. Overruled.

21 You cannot coach the witness or
22 make indications to the witness, if that's what
23 you're doing back there.

24 MS. MC DONALD: No, I'm not trying to coach

1 him.

2 THE COURT: Or shake your head.

3 MS. MC DONALD: Mr. Kinnally has refused to
4 acknowledge me as Ellizzette Duvall Mc Donald since
5 the beginning and it becomes a matter of are we here
6 for the truth or are we here for circle work?
7 Mr. Bement already testified --

8 THE COURT: Wait. Wait. We don't need any
9 editorial on question after question. Your
10 objection was overruled, so let the question be
11 answered and finished. We'll move on to the next
12 one.

13 You may answer it.

14 BY THE WITNESS:

15 A. I knew her. I knew her.

16 BY MR. KINNALLY:

17 Q. Sir, listen to my question, please. Did
18 you know Ellizzette Duvall Minnicelli at or about
19 the time you performed the ceremony in Piatt County,
20 yes or no?

21 A. Yes.

22 Q. Okay. Did you give a deposition at my
23 office on July 3rd, 2019?

24 A. Yes.

1 Q. And at that time a lady who was sitting
2 to your left, much like the lady sitting to your
3 left, took down your answers to the questions that
4 were asked; is that true?

5 A. Yes.

6 Q. Okay. And at that time you told the
7 truth; isn't that right?

8 A. Yes.

9 Q. Okay. And were the following questions
10 asked and answered, page 55, beginning at lines 5.

11 "So prior to today's date you've
12 never seen this document?"

13 Answer, "No."

14 "And did you know that Ellizzette
15 put down her name as Ellizzette Duvall Minnicelli?"

16 Answer, "That's what it says here."

17 "You don't know her by that name,
18 do you?"

19 "No. No."

20 "Do you know that the person that's
21 indicated on this document as Ellizzette Duvall
22 Minnicelli indicated she was born in Lyon, France?"

23 "That's news to me."

24 Were those the questions and your

1 answers that were given on that date?

2 A. Yes, I didn't know her by --

3 Q. Thank you.

4 Now, once the alleged marriage
5 ceremony you conducted in Piatt County --

6 MS. MC DONALD: Objection, Your Honor. It is
7 not the alleged. I have a valid marriage
8 certificate.

9 THE COURT: Overruled.

10 MR. KINNALLY: Let me do it this way with
11 your permission, Judge.

12 BY MR. KINNALLY:

13 Q. The ceremony that was conducted by you
14 in Piatt County, there were no witnesses; isn't that
15 true?

16 MS. MC DONALD: Objection, Your Honor.
17 Mr. Bement has already testified that he performed a
18 ceremony in our home in Edgar County and Mr.
19 Kinnally is continuing to insist that it was in
20 Piatt County.

21 THE COURT: Overruled.

22 MR. KINNALLY: Do you remember the question,
23 sir?

24 THE WITNESS: No, I don't.

1 MR. KINNALLY: Madam Court Reporter, could
2 you read it back with the Judge's permission,
3 please?

4 THE COURT: Go ahead.

5 (Question read.)

6 BY THE WITNESS:

7 A. Yes.

8 BY MR. KINNALLY:

9 Q. Okay. The only people that were present
10 at that time when you were in Piatt County were John
11 Mc Donald, III, and Ellizzette Mc Donald; is that
12 right?

13 A. Correct.

14 MS. MC DONALD: Objection, Your Honor.

15 MR. KINNALLY: He has already answered it.

16 MS. MC DONALD: We are here to determine the
17 validity of my marriage in Edgar County, not Piatt
18 County.

19 THE COURT: All right. You'll get a chance
20 to redirect questions to the witness. Overruled.

21 BY MR. KINNALLY:

22 Q. The marriage license that was obtained
23 to perform a ceremony either in Edgar -- in Edgar
24 County was obtained by you; is that right?

1 A. No.

2 MS. MC DONALD: Objection, Your Honor.

3 Mr. Kinnally is well aware that a marriage license
4 is ascertained by the applicant, the parties
5 engaging in a marriage.

6 MR. KINNALLY: It doesn't matter what I know.
7 It matters what the witness knows.

8 THE COURT: It's overruled. Can we just get
9 through this questioning and then you'll get a
10 chance at redirecting questions to the witness and
11 you can clarify any other items that you have to
12 clarify in argument? But I don't need argument at
13 every question.

14 MS. MC DONALD: Can I say something?

15 THE COURT: Go ahead.

16 MS. MC DONALD: When I was questioning, there
17 appeared to be an argument at every --

18 THE COURT: That was an objection to leading
19 questions or foundation or relevance.

20 BY MR. KINNALLY:

21 Q. At the time of your deposition, isn't it
22 true that you told me everything before the court
23 reporter with respect to the location of the
24 marriage, the ceremony itself, and the nature of the

1 relationship between the parties?

2 A. I answered your questions, yes.

3 MR. KINNALLY: I don't have anything else,
4 Judge. Thank you.

5 THE COURT: All right. That was
6 cross-examination and now it's time for redirect, if
7 you have any questions based on the
8 cross-examination.

9 REDIRECT EXAMINATION

10 BY MS. MC DONALD:

11 Q. Ray, you were asked if -- and it was
12 stated that you had very little contact between
13 myself and John between the years 2000 and 2016.
14 Can you tell the Court why that was?

15 A. Well, our careers were going in all
16 different directions. And so there wasn't the
17 familial, like, weekly interaction with one another.
18 But there was contact.

19 Q. To be clear, who asked you to marry John
20 and I?

21 A. John did, John did but -- yeah.

22 Q. Whose idea was it --

23 MS. MC DONALD: I wasn't party to the
24 conversation so I have to admit.

1 BY MS. MC DONALD:

2 Q. But I'm asking whose idea was it that
3 you marry us?

4 MR. KINNALLY: I object to that, Judge.

5 THE COURT: Sustained.

6 BY MS. MC DONALD:

7 Q. Is it your testimony that John asked you
8 to marry us?

9 MR. KINNALLY: Asked and answered.

10 THE COURT: Sustained.

11 BY MS. MC DONALD:

12 Q. Did you know -- did you know -- in
13 regard to my name, were you aware that I was
14 referred to various names such as Elle, Lisa, Lizzy,
15 in college and that my name was something -- my
16 formal name was something other than that?

17 MR. KINNALLY: Objection, relevance.

18 MS. MC DONALD: Relevance is -- is that
19 throughout the proceedings --

20 THE COURT: Overruled.

21 You may answer.

22 BY THE WITNESS:

23 A. I'm just confused. I'm like dazed.
24 Yes. I knew you by other names, yes.

1 BY MS. MC DONALD:

2 Q. And did you know those were just
3 variations of my formal name, Ellizzette?

4 A. Yes.

5 Q. And did you know me as Ellizzette
6 Duvall? I mean, did you learn that that was my
7 formal name at some point?

8 MR. KINNALLY: Object to this, Judge.

9 THE COURT: Sustained as to the form.

10 MS. MC DONALD: I'm sorry? I didn't hear
11 that.

12 THE COURT: Sustained as to form.

13 Restate.

14 MS. MC DONALD: Okay.

15 BY MS. MC DONALD:

16 Q. Could you state what you learned my
17 formal name was? I don't know if we can call it my
18 formal name, but my full name was other than what
19 people referred to me as?

20 MR. KINNALLY: Same objection.

21 THE COURT: Sustained; form.

22 Rephrase.

23 BY MS. MC DONALD:

24 Q. Could you just state for the Court what

1 other names you knew me as?

2 A. I only knew Duvall. I only knew the
3 name Duvall.

4 Q. My first name?

5 A. Ellizzette.

6 Q. Oh, right, but did you know me by other
7 names other than Ellizzette? Did you know that I
8 was --

9 A. Lisa.

10 Q. -- Lisa?

11 A. Yeah.

12 Q. Go on. Were there others?

13 A. Ellizzette; Elle; Blaydes, last name;
14 and then Duvall.

15 Q. Right.

16 A. And that was all that I knew associated
17 with you.

18 Q. Okay. Thanks.

19 Did you perform a legal -- the
20 legal portion of our marriage ceremony in our home
21 in Paris, Illinois, in Edgar county?

22 MR. KINNALLY: Objection. That's for you to
23 decide.

24 THE COURT: Sustained as to legal conclusion.

1 Rephrase.

2 BY MS. MC DONALD:

3 Q. Where did you perform -- where did you
4 sign the marriage certificate?

5 A. In Edgar County in Paris, Illinois. In
6 your kitchen, on the kitchen table.

7 Q. I'm sorry to have to keep re-asking
8 but -- okay.

9 A. Okay.

10 Q. So it's your testimony that after we
11 left there, we performed a religious portion of the
12 ceremony which was in Monticello in Piatt County?

13 MR. KINNALLY: Objection, Judge. She's
14 trying to impeach her own witness.

15 THE COURT: Sustained.

16 MS. MC DONALD: I'm sorry, what was that?
17 I'm not trying to impeach my own witness. I'm being
18 very clear.

19 THE COURT: Sustained. No answer necessary.

20 Next question.

21 BY MS. MC DONALD:

22 Q. After you performed the ceremony in
23 Edgar County, as you testified before, did we go to
24 Monticello?

1 A. Yes.

2 Q. It was stated that you told Mr. Kinnally
3 everything about the ceremony in your deposition.
4 Would that be reasonably true?

5 A. I answered his questions.

6 Q. But would you say that you told him
7 everything?

8 A. No.

9 Q. Okay.

10 A. No.

11 Q. So do you believe --

12 MS. MC DONALD: I can't ask any other
13 questions? I can only ask to what --

14 THE COURT: Go ahead and ask a question and
15 we'll tell you.

16 BY MS. MC DONALD:

17 Q. Do you believe that your words have been
18 taken out of context and cherry-picked and
19 misrepresented?

20 MR. KINNALLY: Objection. Doesn't matter,
21 irrelevant.

22 THE COURT: Sustained.

23 BY MS. MC DONALD:

24 Q. You testified earlier that after

1 receiving the transcript of the deposition you gave
2 at Mr. Kinnally's office for your own personal, I
3 guess, benefit, you chose to create a timeline or to
4 reflect back on a timeline of the events; is that
5 accurate?

6 MR. KINNALLY: I object, Judge. It's beyond
7 the scope of the direct. He has already asked and
8 answered it on direct -- or the scope of cross.

9 THE COURT: Sustained. Beyond the scope of
10 the direct -- or cross, rather.

11 BY MS. MC DONALD:

12 Q. When John and I applied for the marriage
13 certificate, were you aware that we needed to
14 present documents of your ordination to the circuit
15 clerk in Edgar County?

16 MR. KINNALLY: Objection, assumes a fact not
17 in evidence that they applied for a marriage
18 license.

19 THE COURT: Sustained.

20 MS. MC DONALD: It's assumed that we applied
21 for it because it was given.

22 MR. KINNALLY: Objection, Judge. She's
23 testifying now.

24 THE COURT: Sustained.

1 BY MS. MC DONALD:

2 Q. And it was your -- it's your
3 understanding, Mr. Bement, Ray, that you performed a
4 legal ceremony in good faith between John Mc Donald
5 and myself?

6 MR. KINNALLY: Objection, Judge.

7 THE COURT: Sustained.

8 MR. KINNALLY: Calls for a legal conclusion.

9 MS. MC DONALD: I have no further questions,
10 Your Honor.

11 THE COURT: All right. Any recross?

12 MR. KINNALLY: No.

13 THE COURT: All right. Thank you,
14 Mr. Bement. You may step down and you're excused.

15 THE WITNESS: Thank you.

16 THE COURT: Do you have any other witnesses
17 today?

18 MS. MC DONALD: No, sir.

19 THE COURT: You said you had a witness at
20 1:30?

21 MR. KINNALLY: Yeah, but I'm going to move
22 for a directed finding, Judge. The best evidence of
23 any marriage, purported marriage, is the certificate
24 itself. They haven't produced any documents with

1 respect to that.

2 MS. MC DONALD: I object.

3 MR. KINNALLY: Let me finish, please. I'm
4 addressing the Court.

5 Indeed, the issue in this case, as
6 we've indicated previously, is whether or not the
7 marriage is a valid marriage. The testimony from
8 all of the witnesses indicate, and indeed
9 Mr. Bement, that he was unaware of the guardianship
10 proceeding; that he conducted a secular proceeding
11 in Piatt County apparently with no witnesses.

12 MS. MC DONALD: Again, that's false.

13 MR. KINNALLY: The case law in Illinois with
14 respect to this couldn't be clearer. The law says
15 you must have two witnesses to a marriage. They
16 have no witnesses to this purported ceremony.

17 More importantly, as we argued in
18 our motion in limine, which you have a copy of and
19 which I attached is Mr. Bement's discovery
20 deposition, we made the following arguments: One,
21 Illinois Probate Act provides that before a marriage
22 can be conducted where the -- where one participant
23 is a ward of the court like John Mc Donald, III,
24 that you or the probate court must conduct a

1 best-interest hearing.

2 We know, and you can take judicial
3 notice of the fact, that there was a guardianship
4 proceeding in this case. You can take notice of the
5 fact that John Mc Donald, III, was made a ward of
6 this court on a plenary basis without any capacity
7 whatsoever. And we know based on the record before
8 you that no one knew of the marriage until November
9 of 2017.

10 The Probate Act says under those
11 circumstances, if a marriage is to occur and to be
12 valid, then a best-interest hearing must be
13 conducted by the Court to determine whether the
14 marriage of the two parties, one of which is the
15 ward, in this case Mr. Mc Donald --

16 MS. MC DONALD: Excuse me.

17 MR. KINNALLY: -- is in his best interest.
18 That was not done. The best-interest hearing, if
19 you found that it was a valid marriage, would then
20 result in an order, and the order would be issued to
21 a county clerk indicating that the marriage could
22 take place.

23 More importantly, Judge, this is
24 not, as the statute says, a matter of just a simple

1 preponderance of the evidence. It must be clear and
2 convincing evidence that it's in the best interest
3 of the ward. We have not heard any testimony in
4 this case that would indicate that this marriage is
5 valid based on that statute. That's number one.

6 Number two, we also have a probate
7 provision, which I cited in my motion in limine
8 which you have a copy of, or the response to the
9 motion in limine reply, which indicates that a ward
10 cannot enter into a contract with any other person
11 unless -- and in this particular case it says he
12 can't enter into a contract, and a marriage is a
13 civil contract. And if they do enter into a
14 contract, the law says, in the statute that I
15 quoted, that the contract is invalid and it's void
16 as to the ward.

17 Those are the two bases for our
18 argument that this is not a valid marriage. Plus
19 there's no evidence that there is a valid marriage
20 other than what Mr. Bement said, and Mr. Bement said
21 he conducted a ceremony.

22 There's no evidence of it other
23 than what he said, and for those reasons I do not
24 believe that she has shown in this case,

1 Ms. Mc Donald, that she is an heir of the Decedent.
2 It would have been a simple proposition for her to
3 produce a marriage license, a marriage application,
4 and a marriage certificate. More importantly, it
5 would have been very simple for Mr. Bement to do
6 that. They chose not to do that and they have not
7 shown by a preponderance of the evidence, if that's
8 the standard you're going to use.

9 But if you look at the best
10 interest of John and you look at the Probate Act,
11 the clear and convincing standard would be the one
12 that would be required for a best-interest hearing.
13 I know you can't conduct the best-interest hearing
14 now and the reason you can't is because my client,
15 Shawn Mc Donald, was deprived of being able to
16 invalidate the marriage because he didn't learn
17 about it until November of 2017. Indeed you will
18 see pleadings that were initiated by my co-counsel
19 in the guardianship case where she attempted to do
20 that, but because of Mr. Mc Donald's untimely death,
21 that never occurred.

22 I think it's pretty clear, Judge,
23 based on the record that you have before you that
24 they haven't proven their case and that you should

1 dismiss their claim, the claim that Ms. Mc Donald is
2 an heir of the Decedent, as a matter of fact and as
3 a matter of law. Thank you.

4 THE COURT: Okay. Counsel has made a motion
5 for a directed finding at the close of Petitioner's
6 case, and you may respond to that with your
7 arguments.

8 MS. MC DONALD: What is a directed finding?

9 THE COURT: That means that the case would be
10 over because you haven't proven your case.

11 MS. MC DONALD: I would like to know what can
12 be done about the fact that opposing counsel has
13 blatantly lied about their knowledge of the wedding.
14 It was known by Shawn even prior to July that John
15 and I were getting married, and, in fact, there was
16 evidence ascertained to show that, in fact, Shawn
17 was very aware that John and I were married. And
18 now here he comes. He didn't petition to invalidate
19 the marriage while John was alive. No, he instead
20 waited until after he -- until John wasn't here to
21 speak for himself because he knew what John had
22 already stated in another court.

23 They were well aware of the
24 marriage and the guardianship was a fraud on the

1 Court, and they were well aware of that as well.
2 Documents used to bring the guardianship case were
3 written by -- allegedly written by a physician who's
4 also now stated they did not write those documents.
5 But unfortunately we didn't have the opportunity to
6 invalidate the guardianship.

7 Mr. Bement misunderstood the
8 question. He was clearly aware of the guardianship
9 case because he was an advocate for John and he
10 attended court during the guardianship case with us.

11 Furthermore, I shouldn't be the one
12 having to defend the validity of my marriage. And,
13 in fact, if you want to challenge the validity of my
14 marriage, your case should be brought against the
15 Edgar County clerk's office.

16 My husband and I followed the rules
17 according to the Edgar County circuit clerk. We
18 produced the documentation we were required to
19 produce. We filled out the application. We waited
20 for them to contact us and tell us that our marriage
21 application for a license had been granted, at which
22 time we picked that up; and we had an interfaith
23 marriage ceremony in Edgar County, Illinois, in
24 Paris, in my home. Afterwards, we had a religious

1 celebration in Monticello.

2 And if we're here for the truth,
3 let's speak to the truth of the matter. I had a
4 legitimate marriage to my husband. He testified to
5 that even in the other court. And, again, it
6 shouldn't be me who suddenly has to sit here and
7 defend the legitimacy of my marriage when I already
8 have a government-issued marriage certificate from a
9 government circuit clerk's office in Edgar County,
10 and I'm just extraordinarily disappointed being the
11 daughter of law enforcement and a long line of
12 barristers and jurists to be sitting here today and
13 have people blatantly lie to this Court when they
14 knew that I was married, Your Honor, back in July of
15 2017.

16 And that's all I have to state,
17 Your Honor.

18 THE COURT: Any argument, reply on the
19 motion?

20 MR. KINNALLY: Judge, very briefly.

21 There's been no statement,
22 evidence, law presented which refutes any of the
23 arguments that I made in my opening statement. The
24 issue of a ward of this Court is a significant one,

1 especially when that ward is -- has no capacity.
2 The Court takes a very zealous view of protecting
3 the rights of the ward, as well it should, when a
4 person is in that condition. It can't be
5 controverted now and it wasn't controverted then
6 that unfortunately John Mc Donald, III, was a ward
7 of this Court. That's clear.

8 MS. MC DONALD: It was controverted, Your
9 Honor.

10 MR. KINNALLY: Please, ma'am, let me finish.

11 That order, that judgment, was
12 entered by Judge Noverini after consultation with
13 the doctors that are indicated in the reports that
14 were filed with the Court. And what should have
15 happened and what -- and that order was entered in
16 May of 2017. And what should have happened but
17 didn't happen is that if John wanted to get married,
18 then he should have come before the Court with
19 respect to his ability to marry. Instead, we have
20 this ceremony that took place in Piatt County --

21 MS. MC DONALD: In Edgar County.

22 MR. KINNALLY: Geez, excuse me. And that
23 ceremony was a secular ceremony which they needed to
24 produce some document --

1 MS. MC DONALD: Tell the truth.

2 THE COURT: Ma'am.

3 MR. KINNALLY: -- to show that, in fact, it
4 occurred. Why they didn't do that, I don't know.
5 But to bring Mr. Bement in here and basically tell
6 you, and he told you, he didn't know anything about
7 the guardianship. Well, maybe he should have and
8 maybe they should have told him but they didn't.

9 The point of the matter at this
10 particular time, the marriage is not valid for the
11 reasons I stated.

12 You can look at the Crockett case
13 that I indicated in my submissions to the Court
14 where clearly there is no doubt that people have the
15 ability to contest the validity of a marriage even
16 where the ceremony was conducted by proxy. And in
17 that case, the Court held that you can't conduct --
18 and it was not going to give credence to a marriage
19 that was conducted by proxy right before the ward
20 died. This was prior to the statute being enacted
21 with respect to best interest prior to Carbon,
22 another case that I cited in my materials. But it
23 couldn't be clearer here.

24 If they wanted to prove it, all

1 they had to do is prove the marriage certificate,
2 and the reason they didn't is because they know they
3 can't. They didn't bring the marriage certificate
4 in here. They didn't bring the application. They
5 didn't bring the license in here. You should ask
6 yourself why they didn't do that.

7 MS. MC DONALD: Your Honor --

8 MR. KINNALLY: So they can't attack the law
9 that we have in the case because there is no law
10 that supports their position.

11 MS. MC DONALD: Your Honor, we stood before
12 you on December 8th with a valid marriage
13 certificate. After that, three days later, my
14 husband's life was taken, which is still a matter of
15 investigation.

16 THE COURT: All right. Well --

17 MS. MC DONALD: My counsel, in fact, produced
18 a marriage license application and marriage
19 certificate, which you continued to insist to try to
20 challenge. Ms. Ogle came to the Court to represent
21 that she had issued the marriage certificate license
22 in Edgar County, but Mr. Kinnally wasn't a part of
23 the case then.

24 And, again, I object to the

1 reference to my esteemed husband being referred to
2 as a ward when he was perfectly capable, and the
3 entire guardianship case was brought out of revenge
4 and it was a fraud and you killed him.

5 Nothing further to say, Your Honor.

6 THE COURT: All right. I'm going to take
7 10 minutes and give you a ruling on the motion. I
8 have to review some materials. Thank you. 10 to
9 15.

10 (Recess taken.)

11 THE COURT: Okay. You may be seated.

12 Okay. We are currently deciding a
13 motion for a directed finding at the close of the
14 Petitioner's case in chief. And the issue that this
15 hearing is about is the validity of the marriage,
16 the ceremony, the contract, and whether such a
17 marriage, if it was in fact conducted according to
18 Illinois law or could have been conducted under the
19 Probate Act when it happened -- if it happened.

20 The punitive spouse, Ellizzette, is
21 challenging the heirship claimed by the
22 Administrator that is on file with the Court, and
23 she has attempted to establish the validity of the
24 marriage. We heard from three witnesses, Diane

1 Boyer from Paris, Illinois, Dr. Visar Belegu of
2 Baltimore, and Ray Bement of Champaign, Illinois.
3 The Petitioner, Ellizzette, attempted to elicit
4 testimony from each of the three witnesses regarding
5 the longstanding relationship between the Decedent
6 and the Petitioner and the witnesses' respective
7 views and beliefs, whether they had a close
8 relationship and that everybody knew about that
9 close relationship and they lived together as
10 husband and wife after the wedding ceremony.
11 Petitioner also tried to elicit testimony regarding
12 the Decedent's capacity and mental acuity in that he
13 was still working on projects with Dr. Belegu and
14 still sharp on issues he was working on.

15 Neither the longstanding
16 relationship nor the alleged competence of the
17 Decedent at the time of the purported marriage are
18 relevant to whether the marriage was valid or void;
19 and if it was valid, the Petitioner would then
20 become the spouse with preference to nominate an
21 administrator and also, under intestate law of
22 Illinois, she would become the sole heir of the
23 Decedent.

24 This was the hearing to present the

1 relevant evidence to establish the validity of the
2 marriage; i.e., to present a prima facie case of a
3 valid application for a marriage license, a ceremony
4 performed in Edgar County and witnessed by two
5 witnesses. That would establish, at a minimum, the
6 prima facie case to present Petitioner as the spouse
7 in this proceeding, which would ultimately be --
8 which is ultimately about heirship. If she had
9 presented a prima facie case, then we would go on to
10 hear testimony of the witnesses for the
11 Administrator as to other issues -- or the issues of
12 the validity of the marriage. We would have heard
13 from those witnesses as well.

14 The repeated questioning of the
15 witnesses, only one of whom was present at the
16 purported signing of the license, about issues of
17 how close the Decedent and the Petitioner were or
18 how sharp the Decedent was do not convert the lack
19 of evidence on the main issue into a more convincing
20 argument for the Court to consider or credit. There
21 is no evidence of a -- there was no evidence
22 presented on those issues, which are necessary to a
23 prima facie case.

24 As a matter of law, Petitioner did

1 not present a prima facie case of a valid marriage
2 ceremony under the circumstances such as would be
3 sufficient to meet her burden of proof on all of the
4 elements. In doing so, the Court has considered all
5 of the evidence presented. The Court does not
6 consider incompetent evidence. In other words,
7 incompetent evidence being attempted testimony by
8 the Petitioner herself when she was subject to a
9 motion in limine to not testify in this proceeding.
10 It would have been simple to present the evidence of
11 a marriage license and certificate and application
12 and have some witness testify about that, but that
13 was not done.

14 So even considering the evidence in
15 its aspect most favorable to the Petitioner, the
16 case comes up short on presenting. The motion is
17 going to be granted. The Court makes a finding of
18 judgment in favor of the Administrator -- or a
19 finding or judgment in favor of the Administrator.
20 And while it is not as clear as Mr. Kinnally
21 presents as to the case law precedents -- and in
22 that I'm referring to the arguments that Petitioner
23 had when she was represented by counsel during
24 motion practice on a motion for judgment on the

1 pleadings -- it is clear that there was an order
2 finding and adjudicating Decedent as a disabled
3 person and in immediate need of a plenary
4 guardianship and that there was no best-interest
5 hearing held; that the punitive marriage was not
6 known to the Administrator until November 2017; and
7 that the marriage was not properly witnessed or
8 licensed or subject to a best-interest determination
9 by the probate court.

10 Therefore, the motion for directed
11 finding is granted.

12 MR. KINNALLY: Thank you, Judge. We'll
13 prepare an order. Thank you.

14 THE COURT: And I would probably attach to
15 that order a 304(A) finding, because I think that
16 resolves only part of the issues in this case, but
17 probably it resolves the issues with regard to the
18 spouse.

19 MR. KINNALLY: It does. We'll do that.

20 THE COURT: So we may or may not need the
21 304(A) finding, but I would state that it is
22 probably to be -- should be appealed and that you
23 have time limits for appealing, if you wish to
24 appeal.

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So that 304(A) finding that I'm going to say there's no just reason to delay appeal is to advise the Petitioner that time is of the essence on appealing a finding like this, if you wish to appeal, just so you know. So that concludes the hearing for today.

MR. KINNALLY: Thank you, Judge.

* * * * *

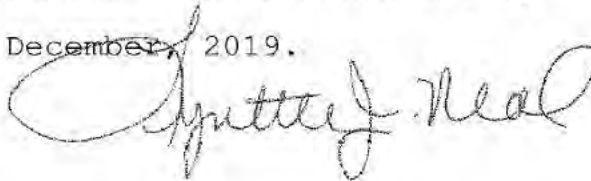
1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF DU PAGE)

4 I, Lynette J. Neal, CSR. No. 84-004363, RPR,
5 do hereby certify that I reported in shorthand the
6 proceedings had at the trial of the above-entitled
7 cause and that the foregoing Report of Proceedings,
8 Pages 1 through 152, inclusive, is a true, correct,
9 and complete transcript of my shorthand notes taken
10 at the time and place aforesaid.

11 I further certify that I am not counsel for
12 nor in any way related to any of the parties to this
13 suit, nor am I in any way, directly or indirectly
14 interested in the outcome thereof.

15 This certification applies only to those
16 transcripts, original and copies, produced under my
17 direction and control; and I assume no
18 responsibility for the accuracy of any copies which
19 are not so produced.

20 IN WITNESS WHEREOF I have hereunto set my
21 hand this 5th day of December, 2019.



22
23 Certified Shorthand Reporter
24

1	2017 30:15 40:3,24 41:8 46:10 48:20 56:2 61:5, 11,22 62:20 63:3, 15 64:21 66:2,17,22 67:18, 22 77:17 100:19 103:19 104:18,24 137:9 139:17 142:15 143:16 150:6	60120 88:16	139:17 140:12,13 144:6 146:15 147:8 148:8,16 149:12
1 31:10 35:3 89:20	2018 62:22 63:1,8,14 67:18 69:3	61 85:2	absence 12:1
10 5:12 26:20 28:4 121:9 146:7,8	2019 89:12,22 123:23	66 85:3	absentia 108:10
1005 88:15	21212 54:9	7	absolutely 16:23 76:2,4 78:6
10:05 28:5	213 21:4	7 31:10	abuse 22:24
10th 111:15	231 11:21 12:7 23:12	706 54:9	acceptance 68:7
11/18 23:14	25 52:16	7500 35:2	accepted 10:2 67:22,23 68:8,9,11
11:25 83:2	3	8	accepting 69:2
11th 56:1 109:19	304(A) 150:15,21 151:1	8 95:21	accident 15:6,12
12:00 116:23	30th 77:17 89:22	81 122:18	accompanied 40:2
12:45 117:8,14	340 17:12	82 98:10,14 122:18	accompany 40:23
13th 13:16,18 21:9	36 85:2	84 98:13	according 105:23 122:6 141:17 146:17
14 12:20	3:49 23:15	85 98:13	accurate 93:12 134:5
15 28:4 87:24 146:9	3rd 8:19 11:7 23:15 89:12 123:23	8th 145:12	acknowledge 20:17 123:4
15-minute 83:2	4	9	act 25:20 27:20 136:21 137:10 139:10 146:19
17 19:7 38:3	45 85:2	9:00 8:19 23:16	actions 72:2
18 12:20	47 85:2	A	activities 110:24
19 99:3 122:18	49 85:2	a.m. 8:19 23:15,16	activity 46:11 114:18
1980 98:2,11	4th 20:13 85:1	ab 19:14	actually 13:8 20:4 80:9 112:8 118:2
1980s 98:4 99:3	5	abandoned 4:13 12:17	acuity 147:12
1981 98:14	5 121:9 124:10	abandoning 11:17	ad 78:19
1982 97:5	50s 105:20	ability 27:19 69:14 112:21 143:19 144:15	addiction 22:23
1985 98:12 99:13,16	51 85:2	able 4:20 8:16 14:18 15:3,15 26:4 34:4 42:15 59:13 60:13 104:3 122:10 139:15	addition 14:9
1990 99:19,24	53 85:2	about 5:12 8:20 14:16 20:15 21:11,18 22:6 23:4 27:2,15 28:8 30:10 37:18 41:24 43:3 48:16 49:7 52:15 56:15 57:13 61:16 71:2 77:15 79:21 80:16 81:19 96:9,14 102:20 105:13,14,19 117:12 121:9 123:18 133:3	additional 110:24
1:00 117:3 118:9	55 124:10		address 17:12,14,15,16, 20 35:1,2 54:6 84:12 88:10,13,14
1:30 117.5 135:20	6		addressing 136:4
2	60 10:22 14:3 15:9		adjudicating 150:2
2 31:10 84:24			administer 83:9
2000 119:23 128:13			administration 19:2 31:12
2004 58:12			
2014 100:18			
2015 100:19 101:5			
2016 63:16 100.19 119.23 128:13			

administrator 4:7,12, 19:21 11:18 20:24 33:15 46:6 74:20 146:22 147:21 148:11 149:18,19 150:6	54:16 96:22 101:20,24 104:6 120:2,20 122:1,2 126:4 127:15 133:14	appealing 150:23 151:4	assisting 21:24
admit 128:24	alert 117:6	appearance 39:5,7	associated 131:16
adopt 105:5	alive 140:19	appeared 67:3 108:22 109:3 127:17	assumed 134:20
advise 151:3	allegations 30:20	applicant 127:4	assumes 40:18 64:16 71:5 99:8 134:16
advocacy 31:17	alleged 59:19 125:4,7 147:16	application 20:1,7 23:13 139:3 141:19,21 145:4,18 148:3 149:11	assured 26:1
advocate 141:9	allegedly 141:3	applied 134:12,17,20	astute 59:12
affairs 35:20 69:21,23 72:20 73:7	Allerton 110:2,15,18,23 111:2	appoint 27:19	attach 27:8,13 150:14
affidavit 19:9,10 24:14 84:19,23 85:8,11,18,22, 24 86:9,11 88:23 89:21 92:10,20 93:20 95:20 96:3,9	allow 16:1 51:8 87:19 115:24	appointed 4:12 31:13	attached 21:8 24:14 136:19
affiliates 51:16	allowed 46:5 88:4	approach 83:8 89:2,3	attack 145:8
afforded 87:4	Alone 92:12	appropriate 35:22 76:20	attempt 13:21
after 6:14 11:13 17:5,7 22:11 25:6 34:3 37:6 51:1,3,13 58:11,12 61:11 64:1 67:3 70:22 97:14 98:2,4 99:2,13,16 110:1, 19 112:10 113:5 116:23 123:9 132:10,22 133:24 140:20 143:12 145:13 147:10	along 30:3 52:3	approximately 57:24 64:24 97:4	attempted 63:5 139:19 146:23 147:3 149:7
afternoon 16:14	already 7:21,22 9:23 15:1 19:21 26:10 30:13 42:23 46:19 59:24 76:16 84:8 102:20 107:13 122:17 123:7 125:17 126:15 134:7 140:22 142:7	April 14:14 38:3 104:17, 24	attempting 44:12
Afterwards 141:24	also-known-as 4:11	ARDC 20:8	attempts 62:12
again 8:16 11:4 14:6 16:4 20:11 22:9 28:20 39:6 89:17 98:9 101:15 103:5 106:16 112:21 116:12 118:12 119:1 122:18 136:12 142:5 145:24	among 51:15	area 14:17	attend 38:19 78:8 108:21 111:9
against 61:21 78:17 82:8 107:1 141:14	amongst 56:7 71:10 97:12	argue 69:19,20	attendance 79:5
agencies 46:16	amount 97:7	argued 86:10 136:17	attended 141:10
aggressively 7:23 10:9	another 20:9 22:18 28:11 38:17 40:21 43:22 46:21 53:13 77:4 87:16 105:12 109:16 128:17 140:22 144:22	arguing 59:23 70:5,6,14	attention 41:21
ago 5:12 15:24 24:22,23	answering 7:17 51:9	argument 70:10,15 84:19,21 127:12,17 138:18 142:18 148:20	attest 21:13 65:12
agree 76:9	answers 94:12 96:17 124:3 125:1	argumentative 40:13 91:15	attesting 86:16,18
agreed 110:14	anticipate 86:4	arguments 23:21,23 136:20 140:7 142:23 149:22	attorney 16:2 18:7 20:2, 4 22:19 46:14 108:22
ahead 8:18 13:4 26:17 38:17 39:14 46:21 52:24	apologize 13:17 25:14 38:9	Arizona 6:1 8:7 16:20,23 17:1,8 27:10	attorneys 10:16 14:10 24:2 25:20 71:19
	apparently 26:14 136:11	arranged 49:6	author 67:1
	appeal 150:24 151:2,5	arrogant 6:8	aware 25:14 35:14 52:4 55:13,21,24 56:3 58:1,15 59:5 60:3,19 61:15,20 62:3 67:21 69:2 71:17,24 80:9,23 81:8 97:8 98:7, 19 99:2,12,15,18,24 100:5,9,20 103:19,22 106:23 108:8,16 114:18 127:3 129:13 134:13 140:17,23 141:1,8
	appealed 150:22	ascertained 127:4 140:16	Awareness 98:18
		aspect 149:15	away 6:22 67:21
		asserted 66:9	
		assessing 115:21	
		assistant 8:23 9:4,6,7 60:21	

B	
B-E-L-E-G-U 54:14	behalf 27:21 81:14
B-E-M-E-N-T 88:13	behavioral 119:11
back 8:7,15,18 10:16 16:21 30:15 32:22 34:1 37:5 43:15 83:19 87:15, 22,23 88:5 93:11,19 94:1,7,22 95:2,6,11,12 98:10 102:9 111:4 117:8, 13 118:8 120:1,18 121:18,20,23 122:23 126:2 134:4 142:14	Belegu 32:20 53:15,20, 21 54:8,17,22 60:13 61:2,20 65:11 67:16 70:2,18 73:23 74:19 76:16 147:1,13
bailiff 4:24 54:2 87:22 88:4,7	belief 45:16,17,24 48:17 58:1
bailiwick 116:13	beliefs 106:12 147:7
Baltimore 54:9 63:19 64:1 147:2	belonging 63:24
barristers 142:12	Bement 12:24 33:21 83:7,8,18 87:4,15,17,23 88:12 89:6,11,20,21 90:3 91:4 93:2 94:17 97:1 102:23 104:2 106:19 107:15 109:2,5 115:20 116:14 118:3,23 119:1,9 122:4,17 123:7 125:17 135:3,14 136:9 138:20 139:5 141:7 144:5 147:2
based 13:2 22:7 48:9 72:9 76:12 79:15 80:1,2 82:12 85:18 106:12 114:23 128:7 137:7 138:5 139:23	Bement's 84:15,23 86:24 87:2 120:14 136:19
bases 138:17	bench 4:9
basically 144:5	benches 32:22
basis 59:14 60:18 68:16 72:15 87:19 88:23 112:13,14 137:6	benefit 134:3
beautiful 112:8	best-interest 137:1,12, 18 139:12,13 150:4,8
bedside 6:9 16:16	bit 6:7 65:3
Beer 78:24	blatantly 140:13 142:13
before 9:23 18:12 39:2 40:4 41:22 54:4 57:17 65:22 66:1 68:11 83:12 85:5,17 86:17 87:17 95:21 96:2,5 109:5 111:7 127:22 132:23 136:21 137:7 139:23 143:18 144:19 145:11	Blaydes 131:13
began 105:14,18	blew 25:9
begin 54:4	board 69:12,13 81:23
beginning 123:5 124:10	boards 22:3
begins 83:12	born 124:22
	boundaries 35:22
	Boyer 29:10,13 30:7 32:6,8 34:8,12,24 53:1,6 147:1
	brain 14:14
	break 26:20 28:17 52:15 53:11 83:2 92:1
	breaking 105:15
	breaks 92:3
	bridge 29:3
	briefly 74:16 142:20
	bring 28:12 72:11 82:4 94:15 141:2 144:5 145:3, 4,5
	bringing 108:3,4 112:5, 6
	broad 86:15
	Brooklyn 90:8,9,12,16, 17 91:5
	brother 19:18 55:14 71:20 106:20,24 114:19
	brought 26:14 39:3 41:20 47:12 59:21 82:13 84:14 141:14 146:3
	bullying 40:6 41:9
	burden 149:3
	business 60:20 72:21
	business/professional 66:19
	C
	California 17:13
	call 7:2 8:24 9:12 10:10 15:16 26:16 29:5 32:6 33:3 34:1,3 65:13 83:4,6, 19 87:15,22,23 112:4 118:12 130:17
	called 6:14 7:3,7 8:15 9:13 12:16 34:13 54:18 89:7 91:17,19 103:23
	calling 9:4 33:16 53:19 65:14
	calls 39:22 42:2,12 43:5 48:4 50:20 57:16 65:8,9, 12 73:14 81:15 104:1 113:13 135:8
	canceled 87:17
	cancer 6:6
	candidate 80:10
	capability 22:6
	capable 47:3 69:22 72:20 146:2
	capacity 30:11,15 60:20 61:7,11 68:17,24 69:24 70:9 75:5,11,21 76:12,23 112:22 115:20,21 137:6 143:1 147:12
	captioned 14:21
	Carbon 144:21
	care 16:11 17:4,8 59:13 72:19 76:6,11
	careers 128:15
	caring 72:17 114:3
	carry 60:20
	case 6:4 7:11 8:2 10:17 12:2,15,16 13:2 14:6,10, 16,22 15:17 18:12 19:6, 22,23 25:18 44:11 47:11 55:6 59:21 72:9,12 75:4, 19,20 77:11 82:5 87:21 107:1 108:3,5 117:7 136:5,13 137:4,15 138:4, 11,24 139:19,24 140:6,9, 10 141:2,9,10,14 144:12, 17,22 145:9,23 146:3,14 148:2,6,9,23 149:1,16,21 150:16
	casual 65:5
	casualness 49:7
	celebrated 52:7
	celebration 142:1
	ceremony 42:1,21 44:1 79:3 104:14,17,24 109:20 110:24 111:8,21 113:6 116:1,2,9,11 120:10 121:11,12 122:5, 14 123:19 125:5,13,18 126:23 127:24 131:20 132:12,22 133:3 135:4 136:16 138:21 141:23 143:20,23 144:16 146:16 147:10 148:3 149:2
	ceremony' 19:12
	certainly 34:19
	certificate 95:22 109:22 110:1,12 121:3 125:8 132:4 134:13 135:23 139:4 142:8 145:1,3,13,

19,21 149:11	clarify 87:13 127:11,12	concern 50:9 71:1 114:24	continuance 5:24 10:15 11:21 12:8 16:13 23:13 28:12
cetera 102:17	clear 96:9 109:12 128:19 132:18 138:1 139:11,22 143:7 149:20 150:1	concerned 8:20 33:5	continue 14:24 26:7,12 27:14 109:14 118:2
challenge 141:13 145:20	clearer 136:14 144:23	concerns 45:8 71:2 73:6 115:1	continued 99:4 145:19
challenging 55:14 146:21	clearly 57:16 109:3,5 141:8 144:14	concertively 7:23	continuing 99:18 100:1 125:19
chambers 70:14	clerk 7:12,14,15 10:1 32:7,13 53:22 83:9 134:15 137:21 141:17	concludes 151:5	contract 138:10,12,13, 14,15 146:16
Champaign 88:15 91:11 110:14 147:2	clerk's 7:3 8:10 9:5,13 23:16 24:7 141:15 142:9	conclusion 39:23 48:5 73:15 113:14 131:24 135:8	controverted 143:5,8
chance 16:7 118:6 126:19 127:10	clerks 7:2	concur 94:14,19	conversation 42:11,17, 20,24 43:3 44:6 53:9 64:13 105:16 128:24
change 109:10	client 12:22 31:12 52:20 84:7 94:1 139:14	condition 26:4 143:4	conversations 21:14, 18 37:19 41:24 42:7 56:13 62:5 64:12 65:5 105:13,18
changed 110:14	clinical 76:6,11 77:4 80:17 88:17 119:15	condo 63:19 64:1	convert 148:18
characterization 49:18 62:16 70:4	close 11:22 140:5 146:13 147:7,9 148:17	conduct 35:23 60:20 69:14 73:7 136:24 139:13 144:17	convey 81:3
characterizations 60:23	clothes 110:14	conducted 121:13 122:8 125:5,13 136:10, 22 137:13 138:21 144:16,19 146:17,18	convincing 138:2 139:11 148:19
characterize 42:10 65:7	co-counsel 139:18	conducting 72:21 122:13	copies 30:2
check 92:15	coach 122:21,24	confused 101:21 129:23	copy 6:20 136:18 138:8
checking 8:24	cognizant 112:22	connectome 65:24 113:5	corporate 22:3
cherry-picked 87:2 133:18	colleague 55:10	consideration 74:6 117:24	correct 4:12 19:8 20:6 79:5 93:20 116:17 121:5 126:13
chief 87:21 146:14	colleagues 51:16 56:8 71:11	considerations 23:12	cosmetologist 119:17
choosing 10:10	college 129:15	considered 23:21 149:4	cosmetology 119:11
chose 134:3 139:6	comfortable 106:14	constant 27:1	counsel 6:15 14:1 15:9, 19 20:24 22:13 23:2 27:1 52:23 107:11 140:4,12 145:17 149:23
Christians 112:4	commence 28:7 104:17	Consulate's 86:22	county 40:24 96:5 121:13 122:8 123:19 125:5,14,18,20 126:10, 17,18,24 131:21 132:5, 12,23 134:15 136:11 137:21 141:15,17,23 142:9 143:20,21 145:22 148:4
Christine 92:19	commenced 7:22	consultation 143:12	couple 15:23 21:8
Church 121:4	commences 18:13	contact 27:1 63:5,6 64:21 65:1 69:11 119:21 128:12,18 141:20	court 4:1,3,5,9,16,18,20 5:2,6,10,11,16,18,21 6:11,15,19 7:1,14 8:9
circle 123:6	commencing 69:3	contacted 20:3 24:7 62:11,13,20,23 64:5	
circuit 134:14 141:17 142:9	comment 27:15	contended 72:8	
circumstance 7:19	common 45:17 56:15	contends 107:11	
circumstances 9:3 37:3 74:7 86:8 137:11 149:2	communicated 101:6	contest 9:17 144:15	
cited 138:7 144:22	communicating 70:22	context 87:3,5 133:18	
civil 138:13	company 66:12		
claim 11:18 72:15 140:1	competence 147:16		
claimed 146:21	complete 21:5 86:4		
clarification 87:10	complies 119:2		

9:4,7,9,12 10:1,7,13 11:2,5,20,23,24 12:7,10 13:5,16,20 14:19 16:19, 24 17:2,11,16,20 18:1, 11,18,21,22,23 19:15,20 20:12,15,18,24 21:3 22:4,6 23:3,4,8,11,12 24:16 25:2,5,6,8,9,11,15 26:22 27:3,6 28:2,10,16, 19 29:1,2,5,8,11,13,16, 19,22 30:5,14,18,24 31:3,6,18,21 32:3,10,12, 16,21 33:2,6,10,17,22,24 34:10,22 35:1,4,17 36:4, 20 37:9,13,16 38:13,16, 19,22,23 39:3,5,7,9,10, 13,24 40:3,10,14,18,21, 23 41:4,6,13 42:4,14,22 43:1,11,14,17,20 44:4, 10,14,22 45:5,14,19 46:1,8,17,19 47:8,14,23 48:7,15 49:24 50:12,22 51:7,19,23,24 52:10,12, 14,19,24 53:3,5,13,17, 19,21 54:1,4,11,15 55:3, 7,19 56:11,19 57:3,6,9, 17,18 58:5,7,19 59:2,8, 16,18,23 60:4,11,24 61:18 62:1,9,17 63:11,21 64:3,9,18 65:14 66:7 67:6 68:5,20 69:8,17 70:7,9,11,12 71:7,15,22 72:6,10,11,23,24 73:2,9, 17,19,24 74:9,12,13,15 76:19 77:1,6 79:15 80:3, 14,21 81:6,14,17 82:1, 11,19,22 83:1,4,8,11,15, 17,21,24 84:3,6,8 85:6, 10,14,15,17,20 86:1,3,12 87:7,10,18 88:3,6,9,14, 18,20 89:3,18,22 90:1 91:3,6,21 92:1,5,7 93:7, 18,21 94:6,11,15,23 95:2,16,21 96:3,6,14,21 97:24 98:15,18,22 99:7, 10,22 100:3,14,16,23 101:9,16,20,22 102:5,8, 14,16,19 103:6,9,17 104:3,4,11,21 105:3,7,9 106:4,16 107:4,14,17,20 108:6,14,19,21 109:1,3, 6,14 110:3,5,9,21 111:4, 13,17,23 112:16,23 113:9,15,19,23 114:5,11, 16,21 115:4,8,13,18,23 116:5,7,15,17,23 117:2, 6,8,16,19 118:4,8,11,14, 17,20,22 119:3,5 120:2, 15,20 121:22 122:2,10, 20 123:2,8 125:9,21 126:1,4,19 127:8,15,18, 22 128:5,14 129:5,10,20 130:9,12,21,24 131:24 132:15,19 133:14,22 134:9,19,24 135:7,11,13, 16,19 136:4,23,24 137:6, 13 140:4,9,22 141:1,10 142:5,13,18,24 143:2,7, 14,18 144:2,13,17 145:16,20 146:6,11,22 148:20 149:4,5,17 150:9, 14,20 Court's 30:13 courtroom 5:1 12:24 cover 96:17,19 create 92:23 93:16,17, 20 95:13 134:3 created 92:24 93:10 credence 144:18 credit 148:20 criminal 46:11 71:19 72:2 114:18 Crockett 144:12 cross 29:2 79:15 119:5 120:13 134:8,10 cross-examination 74:15,17 82:13 116:19 119:7 120:15 128:6,8 cross-examine 46:23 cured 10:18 current 72:3 <hr/> D <hr/> dad 7:7 27:14 28:15 dad's 8:2 16:16 daily 60:18 68:16 72:21 date 7:21 8:19 10:15,23 12:20 25:8,9 37:24 56:3 65:21 79:23 84:21 90:21 124:11 125:1 dates 25:12 36:12 37:17 38:10 daughter 142:11 day 7:13 11:22 12:8 16:5 23:13 28:9 92:4 day-to-day 59:14 days 10:22 14:3,7 15:9 51:3,12 145:13 dazed 129:23 death 8:2 14:8 67:11,24 68:8,10,23 72:13 74:7 139:20 decades 60:18 103:15 Decedent 19:4,11 42:13 43:7 44:4 50:21 65:10 66:6 139:1 140:2 147:5, 17,23 148:17,18 150:2 Decedent's 18:10 147:12 December 7:20 8:19 11:7 19:7 20:14 23:15 38:7 63:16 67:22 145:12 decide 28:3 131:23 decided 17:9 deciding 146:12 decision 7:9 82:18 decisions 8:4,6 16:6 35:21 59:12,13 75:13 declaring 19:17 70:8 deemed 113:11 defend 141:12 142:7 defer 16:2 116:6,7 defines 23:1 definitely 29:21 delay 151:2 delineate 30:18 deny 26:7 denying 31:11 depends 26:18 depose 23:7 deposition 84:24 85:3, 7,10,12 86:11 87:16,17 88:24 89:14 91:16 93:11, 14,19 94:3 95:7,11,14 123:22 127:21 133:3 134:1 136:20 depositions 12:20,22 deprived 139:15 depth 14:18 27:21 deputy 7:2 designate 4:21 23:19 desire 56:23 determination 150:8 determine 11:24 30:19 39:10,16 76:11 105:24 106:8 126:16 137:13 determined 30:13 106:12 Diane 29:10,13,21 32:5, 8 34:9,12,18,24 42:15 146:24 died 9:15 144:20 dies 28:15 difficult 9:24 digress 106:18 diligence 23:22 24:10, 11,13,16 25:21 26:24 27:8 diligently 24:18,19 dining 95:23 dinner 49:4,15 51:1 dire 85:4,15 86:4 87:11, 19 89:9 96:16 direct 34:15 54:20 87:20 96:23 120:16 121:12 134:7,8,10 directed 135:22 140:5,8 146:13 150:10 directions 128:16 directive 13:10 disability 16:2 23:1 disabled 59:11,20 72:12 113:12 150:2
--

disappointed 142:10	5,9,13 47:1,9,17 48:1,3, 6,8,18 49:21 50:2,13,23 51:8,14,20 52:2,11,13,22 53:1,15,20 54:15,21 55:8,11,13,20 56:12 57:8,11,23 58:8,20 59:3, 9,17,19 60:2,12 61:3,4, 19 62:2,10,14,19,21 63:1,5,9,17,18,22 64:4,6, 10,15,20,22 65:1,11 66:15 67:8,14 68:6,21 69:9,18 70:8,20 71:8,16, 23 72:3,4,7 73:1,4,10,18, 22 74:1,4,11,14,21 75:4 76:12,14,16,20 77:3 79:4,17 80:4,10,15,22 81:7,20 82:2,7,14,20 83:5,6 86:13 87:9,14 88:22 89:24 90:19 91:2, 4,22 92:19,21 93:1 94:9, 14,16 96:4,19,24 98:1, 12,17,20 99:1,11,23 100:4,15,17 101:1,10,17 102:3,15,18,22 103:12, 18 104:2,7,12,22 105:6,8 106:5,17 107:5,10,23,24 108:2,7,9,15,17,20,22 109:2,9,18,23 110:7,10, 22 111:6,14 112:9,20 113:1,10,16,20 114:1,6, 12,17,22 115:5,9,12,14, 19 116:4,6,10 117:15,24 118:7,13,16,18,21 119:22 120:11,14 121:17 122:3,16,24 123:3,4 125:6,16 126:11,14,16 127:2,14,16 128:10,23 129:1,6,11,18 130:1,10, 14,15,23 132:2,16,21 133:12,16,23 134:11,20 135:1,4,9,18 136:2,12,23 137:5,15,16 139:1,15 140:1,8,11 143:6,8,21 144:1 145:7,11,17	Drive 17:21	ended 15:4
disclosed 30:16		drop 49:7,8	enforcement 142:11
disclosure 21:5 76:24		due 5:24 13:8 15:5,11 22:2 23:22 24:10,11,13, 16 25:21 26:24 27:8	engaged 12:21 21:23 66:22 103:20 112:17
discovery 12:21 85:10 136:19		duly 34:13 54:18 89:7	engaging 127:5
discuss 43:24 56:22 75:14 79:18 80:5,8 81:12		duties 47:4 69:14	enough 26:11
discussed 20:20 21:9 65:23 75:23 78:6		Duvall 122:15 123:4,18 124:15,21 130:6 131:2,3, 14	enter 71:11 138:10,12, 13
discussion 77:7 80:24			entered 70:7 77:12,16, 19,23,24 79:19,24 143:12,15
discussions 105:13		E	entire 59:21 146:3
dismiss 140:1		e-mails 64:14	equitable 11:4
disrespect 13:20 14:15		earlier 116:12 122:4 133:24	Eric 15:16 21:20,24 24:18
doctor 6:14 8:4 16:11 54:4 76:7 81:13 82:22		early 67:18	especially 143:1
doctors 22:21 76:3 143:13		Edgar 40:23 96:5 125:18 126:17,23 131:21 132:5, 23 134:15 141:15,17,23 142:9 143:21 145:22 148:4	essence 151:4
document 10:4 16:9 86:16,18,19 89:18 90:4, 15 91:8,9,11,13 92:24 93:3,4,6,10,16 124:12,21 143:24		edited 92:13	establish 36:5 38:24 49:21 51:20 98:20 102:22 103:10 146:23 148:1,5
documentation 141:18		editorial 123:9	established 61:14 93:2 107:13
documents 22:1,13 23:1 31:2 59:22 72:10 134:14 135:24 141:2,4		elaborate 45:7,11	estate 4:1 5:7 20:2 45:22 46:6 55:10 74:21 82:16
dog 17:10		electronically 6:17	esteemed 146:1
Donald 4:1,8,10,24 5:6, 9,13,15,16,17,20,23 6:13,17,21 7:5,15 8:11 9:6,8,10,16,19 10:5,8,18 11:3,12 12:13 13:1,5,6, 17 16:21 17:1,3,14,18,21 18:8,9,15 19:19,21 20:13,23 21:2,12,22,23 22:2,5,7 23:6,9,23 24:15, 24 25:4,8,13 26:21,23 27:5,7 28:6,14,21,23 29:4,7,10,20 30:1,6,11, 14 31:22 32:9,11,18,20, 23 33:14,15,17,21,23 34:7,8,11,16 35:5,7,11, 14,18,19 36:7,8,10,21 37:22 38:11,18 39:15,18 40:1,11,17,20,22 41:7,14 42:5,15,17 43:2,8,19,23 44:5,11,15,16,20,23 45:1,6,10,15,20,21 46:2,		elements 149:4	evaluate 66:3
		elicit 147:3,11	evaluated 80:6 81:3
		elite 113:4	evaluating 66:12 81:1
		Elle 129:14 131:13	evaluation 80:17
		Ellizzette 4:10 5:16 89:23 96:4 119:22 122:14 123:4,18 124:14, 15,21 126:11 130:3,5 131:5,7,13 146:20 147:3	evening 6:13
		emancipated 114:14	event 15:5 121:8
		emergency 23:18,20 29:1	events 49:6 134:4
		emotional 91:23,24	everyday 59:12
		enacted 144:20	evidence 25:17 40:18 46:4 64:17 71:6 73:15 99:8 134:17 135:22 138:1,2,19,22 139:7 140:16 142:22 148:1,19, 21 149:5,6,7,10,14
		end 6:1 7:8 11:14 38:8 77:15	exactly 10:22 18:20,23 73:1 94:2
		end-of-life 24:6	
Donald's 75:11,21 82:16 139:20			
door 117:21			
doubt 144:14			
down 16:22 17:2,3 32:9, 12 41:11 53:2,5 82:23 105:21 106:6 124:3,15 135:14			
downward 14:12			

examination 34:15 54:20 79:16 89:9 96:23 120:16 128:9	134:16 137:3,5 140:2,12, 15,16 141:13 144:3 145:17 146:17	filled 141:19	foundationally 47:11
examined 34:14 54:19 89:8	facts 40:18 95:13	financial 15:4	frame 98:23
example 62:13	fair 74:5 76:7 78:5 121:13 122:15	find 7:5 9:2	framework 15:20 72:11
except 49:14	fairness 33:11	finding 29:17 135:22 140:5,8 146:13 149:17, 19 150:2,11,15,21 151:1, 4	France 124:22
exception 104:5	faith 105:23 106:13 111:9 135:4	findings 80:17	fraud 86:12 140:24 146:4
exclude 33-1,2,7,11,19	fall 40:3,24 41:8	fine 78:22 90:24 117:4	fraudulent 37:9,12 59:21 72:9
excluded 33:14 34:6 83:23 118:15	false 136:12	finish 51:8 66:9 136:3 143:10	frazzled 16:4
excuse 137:16 143:22	familial 128:17	finished 123:11	Fred 78:24
excused 53:8 135:14	familiar 35:8 54:24 106:19	finishing 57:3	free 53:1
exhibit 10:21 21:8 29:19,22 31:5,15 89:20	familiarity 78:3	firm 22:19	frequency 48:22 64:24
exhibits 11:3 15:12	family 51:16 56:8 59:4 114:14	fishing 86:15	frequently 65:1 70:1 97:19
exigent 9:3	father 5:24 7:11 9:15 14:12,13 18:9,10 28:7	fitness 21:22 22:6	Friday 7:2,13,16 24:8 30:1 90:5,6
existed 25:22	father's 6:9,14 8:3 16:10 17:10 24:6 26:4	flush 93:13	friend 92:15,17
expand 61:23	fault 15:1	follow 23:19	friends 51:15 56:7,14 97:12
expect 16:15	favor 149:18,19	followed 13:10 141:16	friendship 102:23
expedition 86:15	favorable 149:15	following 124:9 136:20	front 32:4 53:22
experiencing 40:7	fear 44:24 45:10 115:6, 10	follows 34:14 54:19 89:8	full 130:18
expert 30:7 80:18	fears 45:8	forbid 10:11 27:22 28:6, 24	fully 60:19
expertise 14:18 16:3	federal 71:18	forget 8:22	function 112:21
experts 22:20 30:7	feel 69:10 114:23	forgive 22:9	functioning 69:23
expiring 7:11	fell 14:13	form 21:5 55:16 58:3 67:4 68:3 80:2 120:12 130:9,12,21	<hr/> G <hr/>
explain 111:17	felt 93:19 106:14	formal 61:7 112:7 129:16 130:3,7,17,18	Gabrielle 4:7 5:9
expressed 116:12	fiduciary 89:11	forward 15:3 21:19 25:24 26:8,9 28:3,20	gain 62:12
extraordinarily 69:23 142:10	file 4:17 6:12 12:19 18:19,24 21:7 146:22	forwarded 16:8	Garst 40:4
eyes 93:23,24	filed 5:23 6:13 11:11 19:2,24 20:22 21:4,6,7 22:8 23:3,14 29:24 30:3, 4 31:13,23 39:3 46:12,13 61:21 84:22 85:1,19 89:22 93:21 106:24 143:14	found 16:5 137:19	gave 31:1 75:3,10,18 76:6 85:4 89:14 134:1
<hr/> F <hr/>	filing 10:2 30:2 59:6 106:20	foundation 35:16 36:19 37:15,18,19 39:5 43:17 47:7 49:20,24 51:18 52:9 56:18 58:4 59:15 61:16 97:22 98:10 100:11 115:2 127:19	Geez 143:22
facie 148:2,6,9,23 149:1		foundational 91:2	general 40:14 59:12 95:12 96:18,20
fact 5:24 9:17 13:14,20 17:22 20:6 21:23 42:19 51:22 59:20 64:16 66:24 69:21 70:7,9,10 71:6 72:13,16,18 73:15 86:15, 17 87:16 98:20 99:8 107:12 109:4 118:1			General's 46:14
			gentleman 32:18 81:9
			give 8:19 10:20 28:2 37:23 49:17 65:8 87:12 92:14 123:22 144:18

146:7	handed 84:17 89:18,19	high 69:24 112:22	
goal 90:16	happen 143:17	Highway 35:3	I
goals 21:18	happened 10:12 12:11 24:8,9 28:7 37:20 62:6 110:6,8 143:15,16 146:19	HIPAA 78:13	i.e. 148:2
God 10:11 27:22 28:6,24 102:2	happening 5:13	history 102:23	idea 120:9,14 128:22 129:2
Gonzalez 7:7 16:11 27:10 75:16 76:10 81:10	happily 50:15,16 71:12 73:11 114:7	hold 6:11 8:17 10:1,7 29:16 119:10	identification 54:5
good 4:3 5:8 11:24 36:12 38:8,10 60:1 94:13 135:4	happy 50:16,19	hole 95:15	identifies 12:2
Gosselin 4:7 5:9 19:5,8, 16 20:3,15	harassment 40:5	home 38:5 49:2 95:23 111:8,10 122:5 125:18 131:20 141:24	identify 34:22
government 46:16 142:9	hard 121:18	homicidal 113:21	identity 46:14 72:1
government-issued 142:8	Harvard 22:22	honest 91:1	Ill 4:1 30:11,14 36:7 70:8 119:22 126:11 136:23 137:5 143:6
graduated 58:13 97:14, 23 98:13 99:3	hate 9:19	honesty 72:22	Ill's 74:21 75:4
graduating 99:9	Hatherleigh 54:9	Honor 4:24 6:21 13:9 16:17 19:19 25:1,10 27:22 29:21 30:7 38:9 40:11 43:13 46:9 47:17 52:11 53:1 57:8 59:19 60:12 61:24 63:10 69:19 72:7 76:14 77:3 82:21 83:7 86:13 87:14 90:19 93:1 94:10 102:15 104:2 107:13 109:2 116:6,10 117:15,24 120:11 122:3, 16 125:6,16 126:14 127:2 135:10 142:14,17 143:9 145:7,11 146:5	Illinois 17:3,17,22 35:2,3 41:11 81:22 88:16,17 97:15 98:3 100:20 111:8, 21 119:10 131:21 132:5 136:13,21 141:23 146:18 147:1,2,22
grant 12:8 33:19	head 16:22 17:8 123:2	Honorable 40:4	imagine 8:3
granted 77:13 108:9 141:21 149:17 150:11	health 15:5 16:10 30:10	hospital 16:9 22:22	imaging 65:23,24
Greenberg 75:8 76:10 80:23,24	healthcare 77:5 80:7	hospitalized 6:2	immediate 150:3
guardian 60:8 78:18 115:16	hear 34:5 43:14 73:18 110:16 121:18 130:10 148:10	hour 117:9,21	impeach 132:14,17
guardianship 19:12,17 46:12 59:6,21 60:5 61:12,15,21 62:3 72:12, 14,24 75:12,19 77:11 78:4,19 79:19,22,24 80:11 82:4 106:21 107:1, 6,12,14,15 108:8,13,16, 23 109:3 136:9 137:3 139:19 140:24 141:2,6,8, 10 144:7 146:3 150:4	heard 83:13 138:3 146:24 148:12	house 37:8 49:5,17 50:3	importantly 11:20 136:17 137:23 139:4
guardianship's 72:9	hearing 7:19,20 8:19 12:9 18:12,22 30:21 137:1,12,18 139:12,13 146:15 147:24 150:5 151:6	human 65:23 113:4	impromptu 49:11
guardianships 115:22	hearings 78:8	husband 6:4 14:7 27:20 36:24 37:24 38:20 40:3 41:10 42:20 43:19,24 44:7,18 47:2 48:10 49:22 58:16,23 59:20 60:15,19 61:6,10 68:23 69:20,22 72:12,16,18 103:1 107:11 109:4 113:3 141:16 142:4 146:1 147:10	improper 74:10
guess 36:22 47:11 134:3	heir 18:15 19:3 48:2 82:16 139:1 140:2 147:22	husband's 14:24 42:18 45:22 46:6 55:14 60:19 67:11,24 69:13 74:7 112:20 145:14	inaccurate 13:8
guys 37:5	heirship 12:5 14:9 18:1, 12,14 19:9,10 20:19 21:10,13,21 27:17 30:12, 21 31:14,22 146:21 148:8		inappropriate 77:4
H	held 144:17 150:5		incapable 35:20 59:11 69:21 72:16 114:2
half 117:9,21	helping 36:14		incapacitated 59:11
			include 18:7
			included 113:3
			including 33:3
			incompetent 149:6,7
			inconsistencies 84:23 85:2,22 87:12
			inconsistent 87:1
			incorrect 119:13

indebtedness 10:19	140:18 141:6	98:5 99:4,13,15,19	
independent 33:15	investigation 72:1,3	100:1,5,8,10 101:7	K
41:23	76:13 145:15	103:13,19,23 104:8,14	
indicating 137:21	invited 43:10	105:10 106:8,14,20,23	Katz 22:19 30:4
indications 122:22	involved 19:1 41:15	108:9,17,21 109:23	keeping 106:13 111:9
informed 15:23 20:5	60:4 106:23 113:2	112:11 113:11,17,21	Ketubah 111:10,15,18
81:9	114:19	114:2,7,13,19 115:10,15	112:3
initiate 42:6	IRB 69:12	119:22 126:10 128:13,	key 6:3
initiated 139:18	irregular 35:21	19,21 129:7 134:12	killed 146:4
initio 19:14	irrelevant 40:19 47:13	135:4 136:23 137:5	kind 87:7 105:16
injuries 15:11	102:21 111:20,22	139:10 140:14,17,19,20,	Kinnally 4:2,4,6,13,17,
injury 14:14	114:10,20 115:3,7,11,12,	21 141:9 143:6,17	23 5:4,8,9 11:5,6 13:7
insist 125:19 145:19	17,19 133:21	John's 21:18 47:19	18:2,4,14,20,23 20:3
instance 24:22	issue 31:19 66:8 72:23	55:15 56:14,15,22 57:13	29:12,14,18,23 30:9,23
instances 87:1	78:7 84:14,18 136:5	58:1 59:5 64:7 68:8,14	31:1,4,7,20 32:2,24 33:4,
institutional 69:13	142:24 146:14 148:19	69:2 71:10	7,13 35:16 36:1,17
instruct 117:12	issued 15:19 23:5,10	journal 67:2	37:11,14 38:15 39:4,8,22
intend 33:3 118:12	70:11 137:20 145:21	Judge 4:2,8,14 5:8 9:21	40:9 41:5,12 42:2,12,23
intended 27:13 33:11,22	issues 25:18 26:13	11:15 13:4 18:5 19:16,	43:5 44:3,9,21 45:3,12,
intending 41:16	75:22 147:14 148:11,16,	21,23 31:8 36:1 37:11,14	18,23 46:7,18 47:7,13,
intent 104:5	22 150:16,17	38 15 39:4 40:4 42:24	15,21 48:4,13 49:20,23
intention 56:4	items 63:24 64:6,7	44:3,9 45:12,23 46:18	50:10,20 51:5,18 52:9,17
intentions 35:14 41:24	127:11	47:7,21 48:4 50:10 51:5	53:4,11 55:5,16 56:9,18,
42:7 44:20 56:15 57:13	J	52:9,18 53:12 55:5 56:9	24 57:15,20 58:3,6,17
58:1 59:5	January 12:20 20:13	57:1,15 60:9,23 62:7,15	59:1,7,15 60:9,22 61:13
interact 36:24 97:16	62:22 63:1,8,14,15	63:7 66:4 67:4,13 68:2,	62:7,15 63:7,20 64:2,8,
98:4 112:11	Jeff 22:12	18 69:6,15 70:6 71:5	16,19 65:9 66:4 67:4,13
interacting 48:20 70:23	Jewish 105:23 111:9	74:8 76:22 79:14 80:1,	68:2,18 69:6,15 70:3
interaction 37:7 128:17	Jill 8:9	12,19 81:5,15 82:6,17	71:5,14,21 72:5 73:8,14
interactions 48:10	John 4:1 5:6 18:9 21:15,	83:12,23 84:17 85:9 88:2	74:8,10,16,18,19 76:15,
interest 137:17 138:2	22 22:2,8 30:11,14 35:11	89:2 92:23 94:5,18,19,22	22 77:2,8,9 79:13 80:1,
139:10 144:21	36:13 37:7 38:5,12 39:3	96:13 97:23 98:9 99:5	12,19 81:5,15,24 82:6,9,
interfaith 141:22	40:7 41:4,16,24 42:7	103:4 106:15 107:2	17 83:12,16,22 84:1,5,7,
International 69:3	44:18,19 45:2,4,8,11,16	108:4,11 110:4 111:19	14,18 85:8,11,16,18,21
interrupt 39:6 117:7	47:18 48:3,20 49:11	112:18 113:8,13 114:9,	86:6 88:1,21 89:2,10,11,
intestate 147:21	50:5,16 52:4 55:11,21	15 120:13,18 121:21	19 90:2,23 91:7 92:9
intimate 14:8	56:4 57:1 58:12,22 59:10	122:1 125:11 128:4	93:15 94:21 95:1,17
invalid 138:15	60:3,4,7 61:21 62:5,8,13	129:4 130:8 132:13	96:12 97:22 98:9 99:5,8,
invalidate 139:16	63:18,24 64:6,11,22	134:6,22 135:6,22	21 100:2,11,21 101:8,14
	65:1,18,20 66:17,20,21	137:23 139:22 142:20	103:4,8,16,24 104:10,19
	67:1,9,21 68:16 70:8,22	143:12 150:12 151:7	105:2 106:2,15 107:2,8
	71:18 72:4 73:5,6,11	Judge's 126:2	108:1,4,11,18,24 110:4,
	74:20 75:4,11,14,20,23	judgment 143:11	16,20 111:11,19 112:18
	76:12 77:14 78:7 79:4,18	149:18,19,24	113:7,13,18,22 114:4,9,
	80:5,16 81:1,3,12,19,21	judgments 31:9	15,20 115:2,7,11,17
	82:8,16 96:4 97:6,9,17	judicial 137:2	116:22 117:1,4 119:6,8
		July 61:22 77:15 79:20	120:1,6,13,18 121:1,20
		89:12 109:19 111:15	122:1,6,12 123:3,16
		123:23 140:14 142:14	125:10,12,19,22 126:1,8,
		jurists 142:12	15,21 127:3,6,20 128:3
			129:4,9,17 130:8,20
			131:22 132:13 133:2,20
			134:6,16,22 135:6,8,12,

21 136:3,13 137:17 142:20 143:10,22 144:3 145:8,22 149:20 150:12, 19 151:7	Kinnally's 6:18 11:1 94:18 96:16 134:2	kitchen 110:13 132:6	knew 16:16 35:14 36:13 47:2,19 56:6 61:16 65:18 77:23 122:14 123:15 129:24 131:1,2,16 137:8 140:21 142:14 147:8	knowing 47:4	knowledge 13:9 14:8 22:9 41:2,16,19 62:24 81:21 82:8 140:13	<hr/> L <hr/>	lack 22:9 24:11 25:16 148:18	lacked 30:15	ladies 33:16	lady 124:1,2	Lakewood 17:21	lambskin 112:8	late 27:9 67:18	laughing 20:11	law 14:16 15:20 78:17 105:24 136:13,14 138:14 140:3 142:11,22 145:8,9 146:18 147:21 148:24 149:21	laws 15:24	lawyers 12:14 25:6	lead 110:5 120:16	leading 14:7 38:16 40:16 44:13 68:19 70:1 99:6,21 104:19 106:2,16 111:11 127:18	learn 130:6 139:16	learned 130:16	leave 6:8 10:16 16:16 110:2 118:1,3	led 105:13	left 27:23 118:23 124:2,3 132:11	legal 22:1 39:23 48:2,5,9 58:21 131:19,20,24 135:4,8	legitimacy 71:2 142:7	legitimate 142:4	Lemon 17:12	length 20:21 65:8,13	lengthy 29:20 102:23	lens 60:17	letter 20:9 27:12 95:7	letters 19:1,24 20:1,7	level 69:4 102:24	liaised 22:12	liar 91:17,19	license 95:22 112:4 126:22 127:3 134:18 139:3 141:21 145:5,18, 21 148:3,16 149:11	licensed 88:16 119:15, 17 150:8	licenses 119:10,14	licensure 114:24	lie 142:13	lied 86:10 140:13	life 6:1,5 7:8 14:9 21:19 49:19 60:20 121:3 145:14	life-sustaining 6:9 7:10	limine 84:22 89:23 136:18 138:7,9 149:9	limit 87:23	limited 87:19 88:23	limits 150:23	lines 124:10	lining 22:1	Lisa 129:14 131:9,10	list 6:18 10:21 14:2,4 15:14 20:22 22:10,14,20 29:20,21,23 30:2,3,5 31:2,4,5,15 84:4	listed 18:24 19:2,3,24 20:4,5 29:15 30:16	listen 92:7 123:17	lists 11:3	litem 78:19	litigation 106:20,24	live 54:8	lived 37:8 49:19 147:9	lives 18:8	livid 81:19	living 17:22 49:22 50:16 96:7 100:8	Lizzy 129:14	local 23:19	location 127:23	lock 117:20	long 57:24 83:15 88:2 97:3,6 142:11	longstanding 147:5,15	looked 16:9 72:2 95:6	lost 102:7	lot 4:19 65:22	Louis 58:12 99:20 100:6, 9,12	lunch 116:21 118:4,6,23	Lutrey 20:14 22:12	lying 93:23	Lyon 124:22	<hr/> M <hr/>	machine 7:17 8:14	Madam 120:20 121:22 126:1	made 7:8 8:5 13:7 24:23 35:5 84:19,21 86:9 87:6 136:20 137:5 140:4 142:23	mailing 17:14	main 90:16 148:19	major 67:1	make 8:6 11:4 13:21 23:23 25:1,11 32:24 33:8 82:18 122:22	makes 149:17	making 16:6 35:21	man 78:24	managing 35:20 69:21, 22	March 58:12 104:17	marital 68:4 70:4	marriage 19:11,13 20:17 27:19 31:19 39:10, 16,19 42:1,21 48:12 52:7 55:15 64:19 70:22 71:3, 11,12 79:2,3,10,12 95:22 102:17 104:14,16,23 105:10 111:8 112:4 113:5 121:11,12 122:5,7, 13 125:4,7 126:17,22 127:3,5,24 131:20 132:4 134:12,17 135:23 136:7, 15,21 137:8,11,14,19,21 138:4,12,18,19 139:3,4, 16 140:19,24 141:12,14, 20,23 142:4,7,8 144:10, 15,18 145:1,3,12,18,21 146:15,17,24 147:17,18 148:2,3,12 149:1,11 150:5,7	married 35:15 38:24 41:17,22 43:4 44:8 47:3, 5 51:17 52:4 55:22 57:13 58:2 64:12 71:13 72:16 73:12 112:10 114:8 140:15,17 142:14 143:17	marry 42:1,8 56:4,16,23 59:5 104:9 106:1,9 128:19 129:3,8 143:19	marrying 106:14	Maryland 54:9	material 12:6,7 14:5 15:17 25:17	materials 144:22 146:8	matter 11:8 20:16 45:24 66:8,13 107:14 111:20 123:5 127:6 133:20
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137:24 140:2,3 142:3 144:9 145:14 148:24	118:7,13,16,18,21 119:22 120:11,14 121:17 122:3,16,24 123:3,4 125:6,16 126:11,14,16 127:2,14,16 128:10,23 129:1,6,11,18 130:1,10, 14,15,23 132:2,16,21 133:12,16,23 134:11,20 135:1,4,9,18 136:2,12,23 137:5,15,16 139:1,15,20 140:1,8,11 143:6,8,21 144:1 145:7,11,17	Ministry 121:4	mutual 33:8
matters 96:15 127:7	Mclean 22:21	Minnicelli 122:15 123:18 124:15,22	N
Mc 4:1,8,10,24 5:6,9,13, 15,16,17,20,23 6:13,17, 21 7:5,15 8:11 9:6,8,10, 16,19 10:5,8,18 11:3,12 12:13 13:1,5,6,17 16:21 17:1,3,14,18,21 18:8,9, 15 19:19,21 20:13,23 21:2,12,22,23 22:2,5,7 23:6,9,23 24:15,24 25:4, 8,13 26:21,23 27:5,7 28:6,14,21,23 29:4,7,10, 20 30:1,6,11,14 31:22 32:9,11,18,20,23 33:14, 15,17,21,23 34:7,8,11,16 35:5,7,11,14,18,19 36:7, 8,10,21 37:22 38:11,18 39:15,18 40:1,11,17,20, 22 41:7,14 42:5,15,17 43:2,8,19,23 44:5,11,15, 16,20,23 45:1,6,10,15, 20,21 46:2,5,9,13 47:1,9, 17 48:1,3,6,8,18 49:21 50:2,13,23 51:8,14,20 52:2,11,13,22 53:1,15,20 54:15,21 55:8,11,13,20 56:12 57:8,11,23 58:8,20 59:3,9,17,19 60:2,12 61:3,4,19 62:2,10,14,19, 21 63:1,5,9,17,18,22 64:4,6,10,15,20,22 65:1, 11 66:15 67:8,14 68:6,21 69:9,18 70:8,20 71:8,16, 23 72:3,4,7 73:1,4,10,18, 22 74:1,4,11,14,21 75:4, 11,21 76:12,14,16,20 77:3 79:4,17 80:4,10,15, 22 81:7,20 82:2,7,14,16, 20 83:5,6 86:13 87:9,14 88:22 89:24 90:19 91:2, 4,22 92:19,21 93:1 94:9, 14,16 96:4,19,24 98:1, 12,17,20 99:1,11,23 100:4,15,17 101:1,10,17 102:3,15,18,22 103:12, 18 104:2,7,12,22 105:6,8 106:5,17 107:5,10,23,24 108:2,7,9,15,17,20,22 109:2,9,18,23 110:7,10, 22 111:6,14 112:9,20 113:1,10,16,20 114:1,6, 12,17,22 115:5,9,12,14, 19 116:4,6,10 117:15,24	meaning 64:19 112:4	minute 43:11 46:17 109:6	name's 74:19 89:11
means 107:20 140:9	medical 22:24 69:11 81:22 82:3	misrepresentations 71:20 72:4	named 78:24 122:14
meant 47:3 94:20 105:15,19	medical/scientist 60:17	misrepresented 133:19	names 4:11 75:14,15,24 129:14,24 131:1,7
meantime 117:11	meet 15:3,20 72:11 74:22 110:14 149:3	miss 25:4	naming 19:17
measures 7:10	members 56:8	misunderstood 109:4, 10 141:7	narrow 68:14
medical 22:24 69:11 81:22 82:3	mental 21:22 30:10 147:12	Monday 7:18 8:14	Nate 22:19 30:4
month 41:22 48:23	mentioned 19:9	month 41:22 48:23	nature 15:13 27:9 38:22 44:13 65:7,13,19 127:24
months 24:2 25:22 51:22 68:14,23 105:12	message 7:4 8:13	Monticello 132:12,24 142:1	necessarily 42:18 45:10
Morale 106:12	messages 27:24 63:14 64:13	morale 106:12	necessary 132:19 148:22
morning 4:3 5:8,13 6:22 9:14 11:11 16:6 24:6,9 26:17	met 36:9,16 58:10 98:13	mother 6:2 7:8 8:6 10:9 16:6,8,16,17 27:23	needed 7:6 27:2,8 95:9, 10 115:15 134:13 143:23
morphed 105:17	Michigan 18:8	motion 5:23 6:12,20 10:13 12:8 16:13 17:11 23:14 24:12,14,19,23 25:1 26:7,12 27:14 31:11 32:24 33:2,7,19 84:22 89:23 136:18 138:7,9 140:4 142:19 146:7,13 149:9,16,24 150:10	net 86:15
mother 6:2 7:8 8:6 10:9 16:6,8,16,17 27:23	mid 77:15 98:2,4 99:3	motor 15:11	news 77:17 124:23
motion 5:23 6:12,20 10:13 12:8 16:13 17:11 23:14 24:12,14,19,23 25:1 26:7,12 27:14 31:11 32:24 33:2,7,19 84:22 89:23 136:18 138:7,9 140:4 142:19 146:7,13 149:9,16,24 150:10	middle-aged 105:17	move 36:14,17 45:3 63:18 94:10 103:24 123:11 135:21	NFL 113:3
motor 15:11	Midwest 16:22 100:20	moved 64:1 100:6,12	NHL 113:3
move 36:14,17 45:3 63:18 94:10 103:24 123:11 135:21	Mike 18:7	moving 21:19	Nice 89:17
MRI 65:23	mind 112:21	MRI 65:23	night 27:10 111:7
	mindful 14:16 27:2,5		nominate 147:20
	mindling 72:20		nonetheless 24:4
	minimum 148:5		nonlegal 41:2
			nonresponsive 36:18
			normal 35:22
			normally 11:9
			North 88:15
			Nos 31:10
			notary 85:24 86:16,19 90:14
			note 16:12 81:14 82:3
			notes 122:7
			notice 11:9 17:12 23:18 84:11 137:3,4

noticed 23:15	observed 48:17	ordinary 50:9	party's 112:5,6
November 12:13 13:16, 18 21:9 38:8 85:1 137:8 139:17 150:6	obtained 121:3 126:22, 24	ordination 134:14	pass 5:2
Noverini 19:16,21,23 143:12	obtaining 24:17	original 20:1 31:1 43:21	passed 7:21 67:21 68:12
number 70:5 138:5,6	occupation 54:7 88:10, 14,16	originally 18:24 98:10	passing 68:15
numerous 21:14 46:13	occur 137:11	outlined 11:14 85:1,22	past 36:22,23
O			
O'KELLEY 22:12 30:1	occurred 139:21 144:4	overrule 101:23	Pat 89:11
oath 83:9 119:3	October 12:12 89:22	overruled 45:5 51:7 56:19 57:19 63:11 65:14 69:8 73:17,19 81:17 87:18 91:3,6 93:7 101:16 104:4 111:23 120:17 122:11,20 123:10 125:9, 21 126:20 127:8 129:20	Patrick 4:6 5:8 24:17 74:19
object 39:6 55:16 60:22 61:13 66:4 70:3 80:1 86:13 87:14 90:19 103:4 129:4 130:8 134:6 136:2 145:24	offer 44:6,7	P	
objected 77:1	offered 22:3 76:15,22,23	pages 85:2,3	Paul 7:16 8:13,17
objection 35:16 36:1,4, 17 37:11 38:15 39:22 40:9,14 41:5,12 42:2,12 43:5,12,21 44:3,9,21 45:12,18,23 46:7,19 47:7,13,21 48:4,13 49:20,23,24 50:10,20 51:5,18 52:9 55:5 56:9, 18,24 57:15 58:3,17 59:1,7,15,24 60:9 62:7, 15 63:20 64:2,8,16 65:9 67:4,13 68:2,18 69:6,15 70:15 71:5,14,21 72:5 73:8,14 74:8 76:14 77:7 80:12,19 81:5,15,24 82:6,17 87:18 91:22 93:1 94:13 97:22 98:9 99:5,21 100:2,11,21 101:8,14,22 103:16,24 104:10,19 105:2 106:2,15 107:2,8 108:1,11,18,24 110:4 111:11,19 112:18 113:7, 13,18,22 114:4,9,15,20 115:2,7,11,17 120:11 122:3,16 123:10 125:6, 16 126:14 127:2,18 129:17 130:20 131:22 132:13 133:20 134:16,22 135:6	office 7:3 8:10 9:5,13 11:1 19:24 20:1,6,7 23:17 24:8 46:14 86:22 89:12 123:23 134:2 141:15 142:9	paper 66:24 67:10,15, 17,22,23 68:9	pending 70:15 94:24 95:3
obligations 15:4	official 120:9	paper's 68:7	people 14:6,21 15:15 17:5,6,23 21:24 36:13 52:4,6 56:14 57:13,16 78:4 99:9 126:9 130:19 142:13 144:14
observe 48:19 49:10	Ogle 145:20	paragraph 95:21	perceived 48:11
	Oklahoma 86:21	parchment 112:7	perfectly 72:20 146:2
	ongoing 28:11 71:24 98:8	Pardon 33:6 110:16	perform 109:19 126:23 131:19 132:3
	online 121:6	parents 6:4 19:18	performed 111:1,7 113:5 122:4 123:19 125:17 132:11,22 135:3 148:4
	opening 26:11 142:23	Paris 17:3,17,21 35:3 37:5 40:8 41:11 95:23 111:8 122:5 131:21 132:5 141:24 147:1	period 103:14 105:11
	openly 52:8	Park 110:2,15,18,23 111:3	perjured 86:11
	opinion 22:7 48:9 50:14 58:21,22 75:3,10,18 103:2,13 113:11 114:7, 13	Parsons 18:7	permission 83:14 89:20 125:11 126:2
	opinions 22:4	part 89:23 115:20 122:7 145:22 150:16	person 33:13 78:23 86:17 122:14 124:20 138:10 143:4 150:3
	opportunity 14:22 27:11 36:24 49:10 61:10 70:21 74:22 87:4,13 97:16 98:4 109:9 112:11 141:5	participant 136:22	person's 92:18
	opposed 84:23	participate 104:13	personal 45:16 50:14 65:17 73:7 102:24 112:14 134:2
	opposing 15:19 23:2 107:11 140:12	participated 19:11	personally 44:24 57:12 72:21 107:16
	option 9:20	particular 90:15 138:11 144:10	persons 27:20
	order 13:2 19:17 31:11, 12 37:10 38:13 40:5 70:7,11 77:10,16 105:24 121:2 137:20 143:11,15 150:1,13,15	particularity 14:3 22:15	petition 4:10,11 19:1 30:20 31:13,22 32:1,3 140:18
		parties 26:19 127:4 128:1 137:14	Petitioner 87:21 147:3, 6,11,19 148:6,17,24
		party 32:21 65:12 128:23	

149:8,15,22 151:3	preference 4:22 147:20	problems 94:6	proven 139:24 140:10
Petitioner's 140:5 146:14	preliminary 30:8	procedure 11:8	provide 92:20
phone 8:3 9:1 103:23	preparation 105:1	procedures 9:2 14:16	provided 23:2
physical 30:10	preparations 41:15 42:1 104:13,16	proceed 10:21 11:13 13:9 24:4 28:22,23 32:16 34:7 35:6 37:21 54:1 88:20 96:21 118:2 119:5	provision 28:24 138:7
physician 60:15 141:3	prepare 10:20 91:13 104:23 105:10 106:8 150:13	proceeded 110:15,18	proxy 144:16,19
physician's 81:14 82:3	prepared 13:14,19,24 15:8 18:2 19:4 28:21 91:8,9 92:10	proceeding 60:4,5 61:12 74:6 75:12 78:4,19 108:23 136:10 137:4 148:7 149:9	psychiatric 80:7
physicians 75:15,24 76:17 78:11	preparing 16:11	proceedings 38:23 62:4 129:19	psychologically 80:6
Piatt 121:13 122:8 123:19 125:5,14,20 126:10,17 132:12 136:11 143:20	preponderance 138:1 139:7	produce 139:3 141:19 143:24	public 49:2 90:14
picked 141:22	present 5:10 8:5 14:20 24:11 31:24 37:17 126:9 134:14 147:24 148:2,6, 15 149:1,10	produced 135:24 141:18 145:17	publication 67:23
piece 112:7	presented 46:4 72:10 142:22 148:9,22 149:5	profession 22:24	publish 66:24 67:9
pillars 82:4	presenting 149:16	professional 41:3 60:16,17 61:7,11 65:6,19 68:17,24 77:5 102:24 112:13 114:24	published 67:15,18 68:8
place 97:24 137:22 143:20	presents 149:21	professionally 66:22 69:14 72:22 107:16 112:16	punitive 146:20 150:5
plaintiff 87:20	pretty 16:4 48:24 139:22	professionals 80:7	purported 135:23 136:16 147:17 148:16
plan 5:22 16:19	prevent 25:23	project 67:19 113:2,5	purpose 41:3 86:3 87:7
planned 49:12,14 51:21	previous 102:20 118:11	projects 147:13	purposes 66:19
plans 42:20	previously 89:4 136:6	proof 149:3	put 7:8 10:20 15:3,12 18:2 26:9 31:14 90:22 124:15
pleadings 21:8 30:19,22 139:18 150:1	prima 148:2,6,9,23 149:1	proofs 31:23	Q
plenary 19:12 106:21 107:6,12,15 137:6 150:3	primary 16:11	properties 17:5	quadriplegics 15:22
point 9:19,20 10:24 28:13 31:14,18 79:18 100:18 105:21 106:7,11 119:18 130:7 144:9	principal 115:21	property 17:24 41:9 43:4 44:2,8	qualified 60:10
portion 111:1 131:20 132:11	print 10:1	proponent 13:1	qualify 87:5 109:11 118:18
position 15:10 24:24 47:15,18 69:3 76:5,11 82:9 145:10	printed 10:4 16:8	proposition 139:2	quarter 118:9
possibility 44:1	prior 14:3 15:9 27:1,22, 23 46:12,16 56:3 59:6 63:1 67:3,11,23 68:8,10, 14,23 75:11 79:22 85:23 122:13 124:11 140:14 144:20,21	prosecutors 71:19	question 26:21 36:18 38:17 40:20,21 43:14,16, 22 44:13 46:21 55:17 56:20 57:6,9 58:4 60:1 62:1,16 67:5 68:3,4 76:8 80:2 82:10 87:11 91:15 92:7,8 94:9,13,21,23 95:3,4,16 99:6 102:4,6,9, 10,14,16 104:20 106:3 109:5,10,12,16 110:21 111:12 120:3,12,21 121:24 123:9,10,17 125:22 126:5 127:13 132:20 133:14 141:8
Postal 46:15	privilege 62:12	protection 40:5	questioning 87:20 127:9,16 148:14
practically 49:13	pro 24:4	prove 18:16 144:24 145:1	
practice 149:24	probate 136:21,24 137:10 138:6 139:10 146:19 150:9		
precede 87:19			
precedents 149:21			

questions 32:11 34:10 42:16 51:24 52:12,17,19 53:4 54:5,16 61:1 70:13, 18 73:20 74:22 78:21 82:20 88:21 93:13 94:8, 12,18 96:14,16,18,20 98:22 105:22 106:7 109:7 115:24 116:3,8 122:11 124:3,9,24 126:20 127:10,19 128:2, 7 133:5,13 135:9	145:2 151:2	related 65:22	115:1
quoted 138:15	reasonably 133:4	relates 12:5	reporter 102:9 120:20 121:22 126:1 127:23
<hr/> R <hr/>	reasons 40:15 55:4 138:23 144:11	relationship 44:19 48:11 55:18 58:15 68:4 70:5 97:9 98:8 99:4,13, 16,19 100:1,9 101:7,11, 13 103:3,14 105:14,15, 18,19 112:5,6 116:12 128:1 147:5,8,9,16	reports 46:13 76:1 78:10 143:13
R-A-Y 88:12	recall 14:12 77:21 81:2	relatives 19:4	represent 14:23 31:15 74:20 145:20
rabbinical 105:24	recalled 84:2	relayed 7:4	representation 14:23
Rachel 9:8	received 7:1 20:9 64:14 95:7	relevance 46:1,7,9 70:16 73:3 127:19 129:17,18	representations 13:7
Ramon 81:10	receiving 134:1	relevant 31:9 41:5,12 45:13,18 50:11 58:18 59:1,7 63:20 64:2,8 69:7, 16,18,19 71:6,14,21 72:5,6,7 81:24 103:16 107:9,10 108:1,2 112:19 113:7 116:1,2,8,11 147:18 148:1	representative 45:22, 24
Randolph 88:15	recent 101:3	religious 106:13 111:1, 21 132:11 141:24	represented 12:14 24:3,4 149:23
rate 25:15	recently 21:15	relinquish 27:17	representing 24:5
Ray 83:6 88:12 89:6 97:1 98:21 99:2 128:11 135:3 147:2	recess 5:5 28:18 53:18 83:3 118:10 146:10	remain 34:4	request 12:17
Raymond 89:21	recollection 36:10,11 38:1,6 58:9 63:4 67:16 101:2	remember 8:12 41:20 51:1 81:2 89:14,16 125:22	require 16:1
re-ask 37:21	reconnected 101:4	remind 12:10 44:10	required 28:8 105:23 139:12 141:18
re-asking 132:7	record 9:12 11:18 17:11 20:4 53:10 88:10 90:22 122:19 137:7 139:23	removed 6:9 19:22,23	reserve 84:20
Re-calling 5:6	records 20:5	render 48:8	reserved 25:24
re-engage 25:19	recross 135:11	rendered 75:13	reside 15:21
re-enter 14:1	redirect 79:15,16 82:12 122:11 126:20 128:6,9	rendering 59:12	resided 38:5
reach 10:10	redirecting 127:10	renowned 69:24	residence 41:10
read 43:16 76:1 78:10,12 93:19 94:21 95:4,11 96:3 102:9,10 111:4,5 120:1, 3,16,21 121:20,23,24 126:2,5	refer 26:24 34:9,17 54:22 97:1 122:19	rental 17:24	residential 17:15,16
ready 5:18 11:13 12:12, 17 24:3 26:1,2,3 29:5 33:24 34:2 92:5	reference 146:1	repeat 51:10 73:23 121:17	resolves 150:16,17
real 37:7	referred 129:14 130:19 146:1	repeated 148:14	respect 12:1 13:8 19:3 36:19 55:17 57:1 61:17 62:16 70:4 73:15 75:4, 11,20 76:6 77:10 79:2 85:3,23 96:4 127:23 136:1,14 143:19 144:21
reality 15:7	referring 98:16 149:22	rephrase 40:20 43:22 62:18 67:6 130:22 132:1	respectfully 14:23
realized 93:11	reflect 134:4	reply 84:21 85:1 138:9 142:18	respective 147:6
reason 13:3 24:21 25:19,22 28:11 47:10 71:1 85:21 91:4 139:14	refused 123:3	report 81:22 114:24	respond 92:8 94:18 140:6
	refutes 142:22		response 11:5 20:16 42:3,13 43:6 50:21 57:2, 16 58:6 65:10 80:20 81:16 89:23 104:1 138:8
	regard 14:19 22:9,23 42:20 44:20 55:10 62:12 69:13 71:19 86:14,23 88:23 129:13 150:17		responses 42:18
	regarding 16:10 23:24 42:7 45:8 71:2 80:24 106:20 110:24 147:4,11		responsibilities 47:4
	regular 64:21		responsibility 58:23

69:11	seat 118:24	signed 92:22 93:5 95:22 110:1,12	spending 100:19
rest 34:5	seated 84:12 146:11	significant 21:17 31:16 40:12 46:11 47:19 142:24	spent 47:19 60:17
restate 76:8 130:13	seats 22:3	signing 86:18 111:10 148:16	spine 15:11
result 137:20	secular 111:2 121:12 122:7 136:10 143:23	similar 14:11	spiral 14:13
resume 28:5,19 70:13 83:2 117:2 118:24	Security 46:15	simple 137:24 139:2,5 149:10	spoke 6:14 7:13 8:11 9:17,23 16:14 20:15 27:10 50:4 77:14 79:21
retained 20:14	seek 116:15	sir 5:15,17,20 8:11 10:18 16:21 17:1,15 22:5 23:6, 9 29:4 33:23 57:8 77:20 78:15 91:14,17,21 92:11 110:20 122:15 123:17 125:23 135:18	spoken 78:23
revenge 146:3	seeking 81:22 114:13	sisters 19:18	sports 113:4
review 85:5 146:8	send 6:11,15	sit 32:9,12,22 83:18 105:21 106:6 117:17,19 142:6	spouse 146:20 147:20 148:6 150:18
rightful 82:15	separate 97:15	sitting 124:1,2 142:12	Sr 33:14,18
rights 143:3	separated 37:10 39:1	situation 13:10,12 14:11 15:2	St 58:12 99:20 100:6,9, 12
Road 54:9	September 56:1	social 46:15 88:17 105:12 119:11,15	staff 118:5
role 115:21 116:14	series 106:7	sole 147:22	stalking 40:6 41:9
rolling 93:22,24	service 17:10 46:15	something's 28:6	stamps 21:7
room 95:23 96:7 117:18, 20	set 12:9 17:4 98:22	sort 65:20	stand 10:8 32:17 73:17 104:5 118:23
rule 11:21 12:7 21:4 23:12 43:12	shake 123:2	sorts 14:17	standard 139:8,11
ruled 59:24	shanghai 72:14	sound 35:21	standpoint 31:17
rules 14:19 23:20 78:13 106:13 141:16	share 77:4	sounds 72:23	stands 73:19,24
ruling 146:7	shared 45:17 56:15	South 17:12	start 49:16 85:5
Rummerfield 15:16 21:11,12 24:17	sharp 147:14 148:18	speak 8:17 9:21 19:5 50:5 52:22 57:12 80:16 94:4 98:5 107:16 140:21 142:3	started 14:13 37:6 92:2
S	Shawn 4:7 5:9 18:8 33:14 44:16,20 45:1,10, 21 46:4,12 52:22 55:13 62:13,20,23,24 63:5 64:5,7,14 72:3 81:14 84:7 107:24 108:9 139:15 140:14,16	speaking 71:18	starting 5:12
sanctioned 20:8	Shawn's 18:9 71:20	specific 21:17 49:3 79:23 93:13	starts 28:10
sat 91:16	ship 64:6,7	specifically 21:13 50:4 84:24	state 6:23,24 15:20 44:19 55:3 86:1,20 88:9, 17 111:21 112:20 119:10 130:16,24 142:16 150:21
Saturday 24:9	short 149:16	spell 54:11 88:10	stated 72:19 75:22 86:21 107:13 128:12 133:2 140:22 141:4 144:11
schedule 7:20	show 11:15 13:22 17:12 18:19,24 25:2,20 27:8 140:16 144:3	spelling 92:15	statement 19:10 26:11 76:7 78:5 103:7 121:14 122:15 142:21,23
scheduled 11:7,8 25:9 27:3	showing 22:13 24:16 25:17		statements 86:24 87:5 93:4
scientific 67:1,9,23 69:12	shown 138:24 139:7		stating 19:10
scientist 54:10	shows 11:11		status 16:10 18:11,14
scientists 70:1	side 6:16		
Scifo 18:7	sign 19:16 86:16 90:3,7 109:22 111:15 132:4		
scope 134:7,8,9			
screen 32:4			

statute 137:24 138:5,14 144:20	supplemental 22:19 30:3,5	takes 143:2	thought 79:20 93:13 95:11,15 116:15	
staying 38:12 41:10	supplied 22:13,14,18	taking 12:22 71:18	throughout 129:19	
step 53:2,5,22 82:23 135:14	supply 95:14	talk 5:12 8:9 20:12 26:11,19 52:20 78:18 94:7 105:14 117:12	throwing 86:14	
steps 71:18	support 6:10 27:14 31:24	talked 63:8 102:20	Thursday 4:14 11:12 13:16,18 18:5 20:21 21:9 22:11 24:3 25:7 27:16 86:21	
Steven 40:4	supports 145:10	talking 25:15 37:6 116:18	time 4:14 6:7 7:6 10:20 11:17 12:11,13,16,18 14:10 15:15 16:12 17:19 19:3,6,13 20:2,9 26:1 28:3 35:13,20 36:9,16 37:4,23,24 38:4 39:2,9, 10 40:2 47:19 52:13 53:14 58:10 61:6,9 63:4, 8,23 64:11,17 69:10 71:17 72:3 73:16 80:5 84:18,20 87:15 88:2,21 97:7,8,24 98:7,23 100:8, 19 101:3,6 102:12 104:8 106:6 114:23 116:24 117:10 123:19 124:1,6 126:10 127:21 128:6 141:22 144:10 147:17 150:23 151:3	
stipulate 103:6	supposed 6:3 7:22 79:3	teams 113:4	timeline 95:13 134:3,4	
stood 145:11	supposedly 30:10	technology 66:13	times 9:24 37:17 48:21 50:4 58:14 65:4 78:7 81:4	
store 63:24	Supreme 11:20 12:7 23:12	telling 93:18	today 4:8 5:22 7:22 11:8, 9,13 12:24 15:8 16:20 23:8,15 25:24 26:8,15 27:4 30:17 31:24 34:20 35:9 55:1 71:9 95:18 96:3,8 118:2 135:17 142:12 151:6	
Street 17:13	surrounding 74:7	terms 22:20 27:12 45:8 48:22 104:24	today's 10:15 84:20 124:11	
strike 36:17 45:3 103:24	suspend 109:15	testified 34:4,14 38:12 42:23 43:1 45:9 50:24 54:19 63:7,9 75:19 76:17 79:20 83:24 89:8 121:12 122:4,8,17 123:7 125:17 132:23 133:24 142:4	told 18:4 29:24 78:5 103:23 124:6 127:22 133:2,6 144:6,8	
strongly 15:17	sustain 101:22	testifies 85:17	tomorrow 28:8	
stuff 65:23 102:20	sustained 14:13 35:17 36:4,20 37:13 38:16 39:13,24 40:10,12 41:6, 13 42:4,14 43:17,20 44:4,14,22 45:14,19 46:1,8,20 47:8,14,23 48:7,15 50:1,12,22 51:19 52:10 55:7,19 56:11 58:5,7,19 59:2,8,16,18 60:11,24 61:18 62:9,17 63:21 64:3,9,18 67:7 68:5,20 69:17 70:16 71:7,15,22 73:2,9 74:9 76:19 77:7 80:3,14,21 81:6 82:1,11,19 97:24 99:7,10,22 100:3,14,16, 23 101:9 103:17 104:11, 21 105:3 106:4,16 107:4, 17 108:6,14,19 109:1 111:13 112:23 113:9,15, 19,23 114:5,11,16,21 115:4,8,13,18 129:5,10 130:9,12,21 131:24 132:15,19 133:22 134:9, 19,24 135:7	testify 6:7 13:2 15:18 16:1 18:9 21:11,13 22:23 30:10 33:12,22 34:1,3 42:16,19 43:12 44:11 80:13 109:15 149:9,12	total 30:15	touch 14:1
subject 23:11 149:8 150:8	swear 32:13	testifying 14:5 21:21 22:17 32:6 39:16 46:20 47:22 48:14 49:23 55:17 57:1 60:23 68:3 100:22 101:8,14 103:5 109:7,14 118:15 134:23	toward 11:14 16:22	
submitted 10:24 14:2 15:14 86:1 93:3	sworn 32:7,15 34:14 53:22,23 54:19 83:10,21 85:23 88:8 89:5,8	testimony 12:5 24:17, 20 47:24 66:21 68:13 71:9 84:15 85:23 86:24 87:2 88:24 93:4,21 95:21,24 96:2,5,8,9 109:8 117:13 122:6 129:7 132:10 136:7 138:3 147:4,11 148:10 149:7	towards 114:19	
submitting 16:13	Sydney 86:22	text 63:14 64:13		
subpoena 15:12 18:6 95:18		theft 46:14 72:1		
subpoenaed 87:16 95:8		thing 11:10 15:7		
subpoenas 10:21 15:18 23:4,9		things 4:19 10:24 11:2 14:17 15:13 16:22 17:4,7 24:1,5 27:18 37:18 48:16 65:21 116:11		
subsequent 19:22 52:7 58:14 71:12				
subsequently 67:2				
substance 22:24				
substantial 40:6 103:2				
suddenly 142:6				
sufficient 87:15 149:3				
suggest 94:16				
suggestions 94:12				
suicidal 113:17				
summary 42:11				
summer 66:2,11				
Sunday 24:9				
supervised 46:5				
	T			
	table 110:13 132:6			

transaction 98:15,17	undergoing 6:6	Vladimir 7:13,18 8:12, 16 9:17 10:6 13:11	wish 15:17 44:18 150:23 151:5
transcript 4:15 11:10,15 84:16 134:1	understand 26:23 57:18 95:10 109:12 118:20 122:20	voicemail 63:13	wished 27:20
transferred 8:13	understanding 55:9 119:9,20 135:3	void 19:13 138:15 147:18	wishes 14:24 21:18 71:10
translated 4:22	understood 58:23	voir 85:4,15 86:4 87:11, 19 89:9 96:15	withdrew 10:22 14:10 15:9 24:2 25:6
traumatic 14:14	Universal 121:3	vows 96:4	withhold 7:9
travel 61:10	University 97:14 98:2		witness 11:3 14:2,4 15:14 20:22 22:10,14,20 26:10,16 29:6,9,14 31:4 32:14,15,17 34:13,24 35:2,19 36:2,6 38:9 41:8 43:9,13 44:12 46:21,22 50:8 51:11 52:1 53:7,8, 13,19,23,24 54:3,8,13, 16,18 56:21 57:5,21 59:10 61:14,23 63:12 65:16 66:10 68:19 70:13, 21 73:21 74:2 76:23 81:18 82:24 83:5,10,13, 20 84:4 85:5,15 87:12,21 88:8,12,15,19 89:1,4,7 90:20 91:23 92:3,6 93:9 94:20 95:5 100:12,21 101:19,21 102:1,7,11 103:11 107:18,21 110:11,18 112:2 117:5, 12,17,22 118:23 119:2,4 120:4,17,22 122:21,22 123:14 125:24 126:6,20 127:7,10 129:22 132:14, 17 135:15,19 149:12
traveled 66:16	unlike 120:16		witness's 109:8
traveling 66:17 70:1	unreasonable 16:15	W	witnessed 49:18 148:4 150:7
treating 60:14	untimely 139:20	wait 33:18 34:2 43:11 46:17 51:24 52:20 84:10 85:12 102:5 109:6 123:8	witnesses 6:3 10:22 11:23 12:3,23 14:4 15:13 18:3,5 20:19 22:16 23:5, 10 26:15 28:22 33:1,2,8, 20,24 34:5,6 79:9,11 83:22 88:4 118:12 125:14 135:16 136:8,11, 15,16 146:24 147:4 148:5,10,13,15
treatment 6:6 7:9 24:7	unusual 7:18	waited 140:20 141:19	witnesses' 147:6
tremendous 12:21	upset 62:6	Wal'mart 37:6 38:1	word 8:21
trespassing 41:9	Urbana-champaign 98:3	Walnut 17:13	words 22:15 42:17 87:11 105:5 133:17 149:6
trial 4:8,9 5:19 7:21 10:23 11:22 12:12,16 13:15,19 14:3 15:10 23:8,10,14 25:24 27:3 28:10,12 31:5 95:9,10	usually 112:8	wanted 4:20 15:23 143:17 144:24	
trial's 28:11	uttered 43:6	wanting 85:14	
tried 7:23 24:20 72:14 147:11	V	ward 30:14 70:9 136:23 137:5,15 138:3,9,16 142:24 143:1,3,6 144:19 146:2	
trips 66:14	V-I-S-A-R 54:13	waste 11:17	
true 32:2 48:12 79:10 84:3 124:4 125:15 127:22 133:4	vacate 31:11	ways 47:20 97:15	
truth 66:8 116:15,16 123:6 124:7 142:2,3 144:1	valid 31:23 39:11,17,20 48:12 86:20 125:7 136:7 137:12,19 138:5,18,19 144:10 145:12 147:18,19 148:3 149:1	wedding 49:15 51:1,4, 13,21 102:17 109:16,20, 22 110:1 140:13 147:10	
turned 93:24	validity 31:19 126:17 141:12,13 144:15 146:15,23 148:1,12	Wednesday 13:13,14 31:2 84:15 85:19 86:10	
turning 20:8	variations 130:3	week 11:7 13:3 44:11 48:23,24 49:1 65:2,4	
type 72:1	various 12:3 22:1 40:15 113:4 129:14	weekly 68:16 128:17	
U	vehicle 15:11	weeks 14:7 15:24 24:22, 23 37:9	
U.S. 46:15 86:22	veracity 55:14 86:19 93:5	Westacott 15:16,23 21:11,20,24 24:18	
uh-huh 88:19 89:16 121:5	vet 22:2	whatsoever 137:7	
ultimately 100:6 148:7,8	view 85:24 143:2	whenever 40:7	
unannounced 49:8	views 60:16 147:7	White 18:8	
unaware 108:12 136:9	Visar 32:20 53:15 54:8, 17,22 57:12 147:1	wife 49:22 58:24 147:10	
undated 89:21		willing 27:17	

work 14:24 21:23 58:11
65:22 66:12 67:10 92:17
115:21 123:6

worked 67:19 68:10

worker 88:17 119:11,15

working 22:8 60:18
61:5,6 66:1,22 67:10
68:15,22 99:20 147:13,
14

works 115:20

world 60:16

world's 69:24

write 141:4

written 141:3

wrote 81:13

Y

year 6:5 21:17 37:15
46:10 48:11 63:3

years 21:16 36:22,23
101:3 103:14 119:23
128:13

yesterday 5:24 6:13
16:14

York 17:6 86:2,20 90:10

Z

zealous 143:2

1 STATE OF ILLINOIS)
2 COUNTY OF KANE) SS:

3 IN THE CIRCUIT COURT FOR THE 16TH JUDICIAL CIRCUIT
4 KANE COUNTY, ILLINOIS

5 IN THE MATTER OF THE ESTATE OF:)
6 JOHN W. MCDONALD, III,)
7 DECEASED.) No. 17 P 744
8)

9 REPORT OF PROCEEDINGS had at the
10 hearing in the above-entitled cause, before the
11 HONORABLE JAMES R. MURPHY, Judge of said Court,
12 held on November 13, 2019.

13
14 APPEARANCES:

15 KINNALLY FLAHERTY KRENTZ LORAN HODGE & MASUR, PC
16 BY: MR. PATRICK M. KINNALLY,
17 Attorney at Law

18 - and -

19 BENSON MAIR & GOSSELIN
20 BY: MS. GABRIELLE A. GOSSELIN,
21 Attorney at Law,

22 on behalf of the administrator the estate

23 MS. ELLIZZETTE MCDONALD,
24 appeared pro se

1 (Whereupon, proceedings were had
2 in open court as follows:)

3 THE COURT: Good morning.

4 MR. KINNALLY: Good morning, Judge.

5 THE COURT: Estate of McDonald.

6 MR. KINNALLY: Patrick Kinnally for the
7 administrator of the Estate of John McDonald.

8 MS. GOSSELIN: Gabrielle Gosselin, also for the
9 Estate.

10 THE COURT: Good morning.

11 MS. MCDONALD: Good morning. Ellizzette McDonald.

12 THE COURT: Okay. And so we are here prior to a
13 scheduled bench trial date of November 18th. This is
14 November 13th. What is up this morning or what's on
15 the agenda?

16 MR. KINNALLY: Well, there was a hearing on our
17 motion in limine that was briefed.

18 THE COURT: Okay.

19 MR. KINNALLY: And consistent with your pretrial
20 order, I prepared our witness list and our trial
21 exhibit list, which I'll serve a copy on my opponent.

22 THE COURT: Okay. Before we get into whatever
23 motion we're having a hearing on, is it anticipated
24 that the burden of proceeding would be on the

1 administrator first?

2 MR. KINNALLY: No.

3 THE COURT: No. What is anticipated?

4 MR. KINNALLY: They filed a petition, as I
5 understand it, to be appointed administrator, and they
6 have not filed a petition to remove the administrator
7 who is the existing administrator, so I believe it's
8 their burden.

9 THE COURT: And the validity of the marriage
10 becomes an issue at what point?

11 MR. KINNALLY: I guess it depends how my opponent
12 wants to proceed.

13 THE COURT: I guess it's an issue because of
14 preferences as to who becomes the administrator in an
15 estate, whether a spouse has a preference to a brother
16 of the decedent? Is that how that issue is going to
17 come in?

18 MR. KINNALLY: That would be with respect to the
19 heirship. There's two issues here.

20 THE COURT: Okay.

21 MR. KINNALLY: So who is the administrator? It's
22 our position we're the administrator. No one has
23 petitioned to remove us, so we're the administrator.
24 And on the heirship proceeding, it's her burden to

1 prove that she's an heir.

2 THE COURT: And those are both -- those issues are
3 contemplated to be addressed on November 18th at a
4 bench trial hearing?

5 MR. KINNALLY: That's correct, Judge, and the issue
6 in the heirship proceeding is going to be the validity
7 of the marriage. That's my understanding. That's why
8 we filed the motion in limine some weeks ago, which
9 indicates, under Illinois case law, that she can't
10 testify that she's the wife of the decedent, and we
11 gave you those cases.

12 THE COURT: Okay.

13 MR. KINNALLY: And we also gave you a case,
14 Pike v. Pike, which indicates that the marriage in
15 itself is invalid because the solemnization
16 requirements of a marriage under Illinois law require a
17 marriage to have two witnesses.

18 MS. MCDONALD: That's not true.

19 THE COURT: And there are no witnesses to this
20 marriage --

21 MS. MCDONALD: That's not true.

22 MR. KINNALLY: -- as shown by the documents we
23 filed in our request to admit, of which there are
24 eight.

1 THE COURT: Okay. And --

2 MR. KINNALLY: The only other thing I would add,
3 Judge, is there's two other statutes, which we have
4 outlined in the materials that we have given you
5 previously, as well as our trial exhibits, and those
6 are The Probate Act, Section 17-10 -- or let me -- I
7 may have the number wrong. Let me see.

8 No. It's 755 ILCS 5/11a-17(a-10), and that
9 requires that when a person is declared a ward of the
10 court without capacity, which is what happened in this
11 case based on the order entered in May of 2017 by
12 Judge Noverini, that if that person, the ward, wants to
13 get married, then there must be a best interests
14 hearing to determine whether that marriage is in the
15 ward's best interests, and that statute provides that,
16 and the statute also provides that once you hold that
17 hearing, that you then issue an order to our county
18 clerk or the county clerk where the marriage is to be
19 celebrated, authorizing the marriage. That statute was
20 based on the Supreme Court opinion of Karbin v. Karbin,
21 which is 2012 IL 112815.

22 And the other statute that we're relying on is
23 755 ILCS 5/11a-22(b), which provides that any contract
24 entered into by a ward of the court is void as to the

1 ward. It's our position based on the Barber v. People
2 case, which is 203 Ill. 543, which we have already
3 briefed, that a marriage is a civil contract, and the
4 Supreme Court reaffirmed that holding in In Re: or
5 excuse me -- Jambrone v. David, 16 Ill.2d 32.

6 So that's our position, Judge. That's
7 yours.

8 THE COURT: Okay. This is the administrator's
9 witness list and attachments.

10 MR. KINNALLY: I thought you would want --
11 according to your pretrial order, that's what you want,
12 so I brought it up. I didn't bring the booklet up, but
13 I can bring it up tomorrow.

14 THE COURT: Okay. And, Ms. McDonald, you are the
15 person being asked -- asking to be appointed
16 administrator, right?

17 MS. MCDONALD: Yes, Your Honor.

18 THE COURT: And so you have --

19 MS. MCDONALD: Well, I'm asking to have the right
20 to appoint someone as administrator that my husband
21 would have wanted. I'm aware of what my husband's
22 wishes are.

23 THE COURT: So you want to have the right to
24 designate who an administrator would be?

1 MS. MCDONALD: Yes, sir.

2 THE COURT: Okay. So you heard the description of
3 what our hearing is going to be about. Is that your
4 understanding as well?

5 MS. MCDONALD: Yes, sir.

6 THE COURT: So do you have witnesses that you
7 intend to call on Monday, the 18th --

8 MS. MCDONALD: Yes, sir.

9 THE COURT: -- to start your case in chief?

10 MS. MCDONALD: Yes.

11 THE COURT: And have you given that list of
12 witnesses to counsel or to the Court?

13 MS. MCDONALD: I believe we filed that list in
14 September, but I can update that, and I know that it
15 was sent over, and I would be happy to resubmit that.

16 MR. KINNALLY: I would just like to know who they
17 are, Judge.

18 MS. MCDONALD: I can tell you.

19 MR. KINNALLY: Good.

20 THE COURT: Well, wait. I think there was
21 something attached maybe to the respondent's -- are we
22 calling Ms. McDonald the respondent or the petitioner?

23 There was a 213 disclosure list, which is
24 attached to -- as an Exhibit F --

1 MR. KINNALLY: That's mine.

2 THE COURT: -- to your -- to the administrator's
3 motion in limine. Maybe that's what Ms. McDonald is
4 referring to, this list here.

5 MS. MCDONALD: No. It's -- no, sir. No, sir.

6 THE COURT: Okay.

7 MS. MCDONALD: It was one that Mr. Lutrey's office
8 had filed.

9 THE COURT: All right. Well, this says --

10 MS. MCDONALD: But I have seen Mr. Kinnally's.
11 I'm sorry, sir.

12 THE COURT: This says "preliminary witness
13 disclosure," and it doesn't have a filing stamp on it
14 or anything, so I don't know when it was filed, if it
15 was filed. But if Mr. Lutrey filed something else, I
16 don't have that handy.

17 MS. MCDONALD: Okay.

18 THE COURT: So maybe you can describe -- without
19 giving away your strategy or anything, describe
20 generally which witnesses are going to testify as to
21 heirship or the marriage or the other issues that we
22 talked about previously.

23 MS. MCDONALD: Karen Blaydes, she's my mother and
24 the mother-in-law, and she's going to testify as to

1 our -- over three decades of the relationship and the
2 marriage and the planning of the marriage, and also she
3 was present during much of the time that this last
4 situation has gone on.

5 We did remove my father -- I just want to make
6 that known in case this paperwork shows up -- because
7 of his illness.

8 Patrick Rummersfield is going to testify as to
9 the long-standing relationship between myself and John
10 and knowing me.

11 Dr. Visar Belegu.

12 MR. KINNALLY: I'm going to object on that one,
13 Judge, because he's never been disclosed. They haven't
14 disclosed any witnesses.

15 MS. MCDONALD: Yes, we have.

16 MR. KINNALLY: Let me just make my objection.
17 The only document that I received, which I don't know
18 if it was ever tendered to the Court, is Exhibit 9,
19 which is attached. I figured this was coming, which is
20 attached to my reply to the motion in limine. It's
21 this one.

22 THE COURT: Got it.

23 MR. KINNALLY: So I don't know who these people
24 are.

1 THE COURT: It looks like the same that I was
2 referring to in Exhibit F.

3 MR. KINNALLY: That's right.

4 THE COURT: Preliminary Illinois Supreme Court Rule
5 213(f) witness disclosures --

6 MR. KINNALLY: Uh-huh.

7 THE COURT: -- from Ellizzette McDonald.

8 MR. KINNALLY: So I'm just objecting to it
9 because --

10 THE COURT: So your -- go ahead.

11 MR. KINNALLY: They haven't disclosed anything.
12 I mean, he was before the Court, and they said they
13 were preliminary disclosures. He hasn't even contacted
14 these people.

15 MS. MCDONALD: Excuse me. I didn't hear you.
16 You said --

17 MR. KINNALLY: We were before the Court, when
18 Mr. O'Kelly and Mr. Lutrey were here in September,
19 before they withdrew, or August, and told the Court at
20 that time that they were going to -- they have
21 contacted certain people to testify, opinion witnesses,
22 but they had never -- they had never retained them, and
23 they couldn't give you what their opinions were because
24 they didn't have them. That was 60 days prior to the

1 trial, and I objected then, and they said they were
2 going to finalize it, and they never did.

3 MS. MCDONALD: Can you just let me know when I'm
4 allowed to speak?

5 THE COURT: Go ahead.

6 MS. MCDONALD: I strenuously reject everything, in
7 due respect, that Mr. Kinnally is saying. My counsel,
8 who are absolutely excellent, I have no complaints with
9 them. They have contacted and been in constant contact
10 with all of our witnesses. We made it very clear. One
11 of the things we were objecting to is our witnesses
12 were being harassed and bullied, and the proper
13 paperwork wasn't being filed in order to subpoena them
14 for depositions. And so many of them retained counsel
15 on their own because they did not wish to comply with
16 the subpoenas for depositions based upon the way that
17 they were -- these were out-of-state people, and some
18 of them were out of the country, in fact. They -- and
19 some of them are, in fact, attorneys, and they said the
20 subpoenas they were receiving were not legitimate, and
21 therefore they would not comply with the subpoenas
22 unless they were filed appropriately in their
23 jurisdiction.

24 I know one of the witnesses, Mr. Eric

1 westfield -- westacott -- sorry. Eric Westacott, who
2 is an attorney, also spoke with opposing counsel's
3 office. I don't know if he spoke with Mr. Kinnally or
4 Ms. Gosselin, but he did speak with their office and
5 suggested -- and told them they would be willing to
6 comply if the subpoenas were sent accurately, at which
7 time they reoffered saying, well, if we would come
8 down there, would you at least meet with us? And Eric
9 westacott said, I'm not promising anything until the
10 paperwork is filed correctly. And he also represents
11 Mr. Patrick Rummersfield and Dr. Visar Belegu, all of
12 whom said that the subpoenas they received were
13 received after the deadline for depositions. The
14 deadline was set by Your Honor for August 30th. They
15 were receiving subpoenas mid-September, wanting to do
16 depositions around October 16th.

17 So, again, Eric Westacott, who also represents
18 these other two gentleman, stated that he would not be
19 complying with the subpoenas to do the depositions
20 because they were not in keeping with the -- I guess,
21 the rules. So there was that issue.

22 Also, Mr. Jeff Murray as well as Michael
23 Pattison, they also did not receive what they said was
24 a legitimate subpoena. They said the proper -- again,

1 it was not filed. Mr. Pattison lives in Arizona. Jeff
2 Murray lives in England.

3 Also, James Ryan, who lives in Japan, he also
4 did not get proper paperwork. The paperwork they were
5 receiving looked like it was printed from the internet,
6 and it didn't have any court stamp or anything on it,
7 and it would just be this paperwork that was printed --
8 like, for example, from Missouri -- but there was no
9 signatures, no stamps, nothing attached to a subpoena
10 that they had done. And I'm happy to produce --
11 Mr. Westacott actually sent me copies of that just last
12 week, less than five days ago, and I'm happy to produce
13 that.

14 And I know this was an issue before the Court
15 when Mr. Lutrey's office -- in fact, there was
16 discussion back and forth regarding being able to
17 subpoena these people who were out of state and out of
18 the country and organizing to have them deposed. And I
19 do know that they spoke to some of these people at
20 length because I've had some of them contact me to ask
21 what is going on because they said they keep getting
22 phone calls to do a deposition, but they said they're
23 not going to answer to it until they get paperwork that
24 they say their solicitor and their attorneys say is in

1 keeping with the law.

2 THE COURT: All right. So back to Patrick
3 Rummersfield --

4 MS. MCDONALD: Yes, sir.

5 THE COURT: -- which is where --

6 MS. MCDONALD: He's in Missouri.

7 THE COURT: -- Attorney Kinnally objected, I think,
8 and also Visar Belegu.

9 MS. MCDONALD: Belegu.

10 THE COURT: Belegu.

11 MS. MCDONALD: Uh-huh.

12 THE COURT: You mentioned those names.

13 MS. MCDONALD: Right.

14 THE COURT: So you are bringing them to testify?

15 MS. MCDONALD: Mr. Rummersfield was going to -- we
16 were checking to see if we can do a video because he
17 has terminal cancer.

18 THE COURT: Okay. And Visar Belegu?

19 MS. MCDONALD: He is coming here physically to
20 testify, sir.

21 THE COURT: And what is he? Is he an expert or a
22 professional?

23 MS. MCDONALD: No. He is -- John's best friends
24 were Dr. Belegu and Pat Rummersfield for over two

1 decades, and they've known me, and they know -- you
2 know, they've traveled the world with John. They're
3 going to testify as to his relationship and any matters
4 that the Court needs to, you know, hear in order to
5 make a decision, Your Honor.

6 THE COURT: Okay. Who else then?

7 MS. MCDONALD: Mr. Eric Westacott, also somebody
8 who has not only -- he has represented my husband at
9 times in scientific matters, patents and things of this
10 nature, but he is also a close friend for over two
11 decades, as well. He can also testify as to the things
12 that John was working on prior to John's life being
13 taken.

14 Jeff Murray, who is also a father and a good
15 of my husband who was -- he was in constant contact
16 with my husband clear up until the days before this
17 happened. He is also the father of a patient of my
18 husband for over two decades.

19 Jim Ryan, who is the owner of a stem cell
20 research company, also has worked with my husband over
21 two decades.

22 Do you want me to keep going?

23 THE COURT: I guess that's generally -- generally
24 you're going to bring witnesses that are going to talk

1 about your relationship with John McDonald for decades
2 or for this time period --

3 MS. MCDONALD: Decades.

4 THE COURT: -- or whatever, the time period before
5 his death?

6 MS. MCDONALD: All of the above, sir.

7 THE COURT: Okay.

8 MS. MCDONALD: As well as --

9 THE COURT: So I don't know whether there will
10 be -- whether they have any knowledge as to what you --
11 as to the circumstances of the marriage.

12 MS. MCDONALD: Yes, they do.

13 THE COURT: Even though they're in Maryland or
14 other states, Missouri?

15 MS. MCDONALD: Because up until the point that my
16 husband died, we were around them frequently, at least
17 every other weekend, and John spoke to them daily.

18 THE COURT: Were any of them present for the
19 marriage ceremony?

20 MS. MCDONALD: No. John and I elected to have our
21 ceremony the same way we had our relationship, and we
22 elected to have Ray Bement, who is also one of the
23 people who is going to testify, conduct the ceremony
24 with our understanding -- and then after that, we were

1 going to have a celebration following that to invite
2 everybody later, because John and I had both been
3 married before, and we weren't looking to have a
4 ceremony where a lot of people were involved.

5 we have a deeply-held belief that energy is
6 dispersed, and which wanted to contain the energy that
7 we had shared over all this time between us, and it was
8 something that -- this is something that John and I had
9 shared and talked about for years.

10 THE COURT: Okay. So back to the objection to any
11 witnesses, Rummingsfield or Belegu --

12 MS. MCDONALD: Belegu.

13 THE COURT: Belegu.

14 MS. MCDONALD: That's okay. It's a difficult --
15 it's a different name.

16 THE COURT: What's the basis for the objection?

17 MR. KINNALLY: They never disclosed them. You're
18 not going to find a document where they disclosed them.
19 It's not been filed.

20 MS. MCDONALD: How was it that --

21 MR. KINNALLY: I have it, Judge. It's not
22 file-stamped.

23 THE COURT: This one?

24 MR. KINNALLY: Right.

1 MS. MCDONALD: I'm not trying to be --

2 THE COURT: Exhibit 9?

3 MR. KINNALLY: Right. In fact, there's no notice
4 that it was ever filed. If you're going to limit these
5 people to what is in this document, then -- if all
6 these people are going to testify, I mean, we have
7 rules. They haven't complied with the rules.

8 MS. MCDONALD: Touche´.

9 MR. KINNALLY: Ma'am, don't interrupt me. Do not
10 interrupt me, please. So that's our objection, Judge.
11 We're --

12 MS. MCDONALD: You obviously --

13 MR. KINNALLY: -- ready to go on Monday.

14 THE COURT: Wait. Just let him finish.

15 MR. KINNALLY: I don't want to delay this. That's
16 our objection for the record.

17 THE COURT: All right. So -- and does your motion
18 in limine that is pending and about to be heard relate
19 to any of those witnesses or --

20 MR. KINNALLY: No, it does not.

21 MS. MCDONALD: Yes. It relates to Mr. Ray Bement,
22 and if I could --

23 MR. KINNALLY: No, it doesn't. This it is my
24 motion, please. The Judge has asked me a question,

1 which I'm going to respond to.

2 My motion relates to preventing Ms. McDonald,
3 as she is known, from testifying in this case based on
4 Illinois case law which indicates that she is not a
5 person who can testify due to The Dead Man's Act.

6 Also, my reply indicates that the affidavit
7 submitted by Ray Bement, who I deposed, is a fraud on
8 the Court, and the reason it's a fraud on the Court is
9 because her response attaches an affidavit from Bement,
10 which is notarized by a person in New York, not in
11 Illinois. There's no indication that Mr. Bement
12 traveled to New York to have the document notarized.
13 More importantly, the notary public law that we cited
14 in our response, indicates that a notary is only good
15 for three years, and this particular notary, whoever it
16 might be, indicates that her commission expires in
17 2026.

18 More importantly, the affidavit that was filed
19 in response to my motion in limine, as indicated in my
20 reply, is totally inconsistent with what Mr. Bement
21 testified to at his deposition.

22 For example, when I took his deposition, which
23 is Exhibit 2, and it's in the materials that I gave you
24 a copy of, and I took it on July 3, 2019, Mr. Bement

1 testified that he had very little contact with the
2 parties between 2000 and 2016. That's on Exhibit 2,
3 Page 36;

4 That he was only aware of the parties casually
5 dating between the years 1982 and 1987, which is
6 Exhibit 2, Page 53;

7 That it was his idea to marry the parties, not
8 John McDonald's, Exhibit 2, Page 51;

9 That he obtained a license from the Universal
10 Life Church Ministry by obtaining -- spending 5 to 10
11 minutes on a website in order to obtain the
12 qualifications to marry the parties, Exhibit 2, Pages
13 47 to 49;

14 That the marriage ceremony was conducted in
15 Piatt County, not Edgar County, where the marriage
16 license was issued, Exhibit 2, Page 61;

17 That he never knew a person named Ellizzette
18 Duval Minnicelli, Exhibit 2, Page 55;

19 That he never reported the marriage ceremony
20 being filed in Edgar County, even though it was
21 conducted in Piatt County, Exhibit 2, Page 66;

22 That there were no witnesses to the marriage
23 ceremony he conducted in Piatt County, Exhibit 2,
24 Page 60 and Pages 63 and 64; and

1 That he, Bement, was not going to testify as
2 to the mental capacity of John McDonald at trial,
3 Exhibit 2, Pages 71 to 73.

4 The affidavit was created and attached to the
5 response to the motion in limine in direct
6 contradiction of that testimony that was given under
7 oath before a court reporter, much like this lady who
8 is sitting next to you, Judge, in my office, on July 3,
9 2019. And to submit to this Court an affidavit that
10 contravenes that, before some notary public in the
11 State of New York, shows that the affidavit is either a
12 fraud on this Court or Mr. Bement has perjured himself.
13 That's my argument.

14 THE COURT: Any response?

15 MS. MCDONALD: I, once again, strenuously reject
16 everything Mr. Kinnally is saying. He has
17 cherry-picked out of Mr. Bement's deposition, and in
18 fact, in the surreply, Mr. Bement has added two extra
19 points in regard to his affidavit that he submitted
20 that was attached to my motion in limine, my response.

21 THE COURT: You have a surreply, did you say?

22 MS. MCDONALD: Yes, sir.

23 THE COURT: And that has been filed?

24 MS. MCDONALD: I'm sorry, sir?

1 THE COURT: And that was filed?

2 MS. MCDONALD: This morning.

3 MR. KINNALLY: I haven't seen it.

4 MS. MCDONALD: I have a copy here I'm happy to
5 provide. I know that they said that copies would be --
6 let me put my glasses on.

7 The notary -- the notary's -- according to
8 Mr. Bement, the notary expired --

9 MR. KINNALLY: Judge, I object to this. I have
10 never seen this.

11 THE COURT: Okay.

12 MR. KINNALLY: It is inappropriate to file things
13 on the day. You never gave anybody any authority to
14 file anything after --

15 MS. MCDONALD: I'm happy to -- it was
16 electronically filed, Your Honor.

17 THE COURT: If somebody is talking, then let them
18 finish, and then you can get an opportunity.

19 MR. KINNALLY: First of all, I object to her giving
20 you that document, Judge, with all due respect. I have
21 not received it. The court order that was entered the
22 last time we were here, which is October 23rd -- I have
23 a copy -- indicated the protocol that we were supposed
24 to use with respect to this particular trial in

1 conjunction with your standing pretrial order, which is
2 a matter of record, and you filed it a long time ago.

3 There's no provision for filing a surreply.

4 In fact, the reason we're here today is because
5 Ms. McDonald had other matters that she told the Court
6 she needed to attend to, which I respect. That's fine.
7 That's her choice. But there's no provision for filing
8 a surreply, so we object to that, and I don't think you
9 should consider it. I mean, we're here on the 13th.
10 We're going to trial on Monday.

11 THE COURT: I agree. I agree with the fact that
12 you can't file a surreply unless there's something that
13 you have to -- because it's a motion, it's a response,
14 and it's a reply. Unless something new came up in the
15 reply, and you come and say to the Court, something new
16 came up in the reply that I need to file a surreply to,
17 Judge; can I do that? --

18 MS. MCDONALD: Something new did come up.

19 THE COURT: -- then you really can't file it.
20 You can argue things that are in the motion, the
21 response, and the reply. So you're arguing -- I
22 believe you are arguing that Mr. Bement had some
23 renewal of -- or his notary had some renewal. I'm not
24 sure what you were arguing, but that's what you were

1 responding to, I believe, is the notary problem with
2 the affidavit.

3 MS. MCDONALD: There is not a notary problem.
4 According to Mr. Bement, the notary's -- upon him
5 connecting it, he informed me that the notary's year of
6 expiration was not 2026; it was 2020.

7 The fact that the notary is from New York --
8 it doesn't matter if the notary is from New York or
9 it's from the U.S. Consulate in Sidney, Australia.
10 The notary is the notary.

11 But the new issue is -- what I have placed in
12 the surreply is that all of this becomes moot in the
13 fact that I have a legal marriage document, that the
14 due diligence was done by a government office that
15 issued that certificate after -- my husband and I
16 applied and followed the rules, and then subsequent to
17 us having a marriage, we returned those documents to
18 Edgar County, which they were vetted, and they issued
19 us our marriage certificate after having receiving the
20 marriage license.

21 Second, the marriage was performed in Edgar
22 County. The legal portion of the marriage was
23 performed in Edgar County. Afterwards, yes, we went to
24 Monticello. That's about 30 minutes away from where we

1 were. It's a place that's known for having wedding
2 receptions and things of this nature. But we signed
3 the legal document and everything at our dining room
4 table in our home in Paris, Illinois, Edgar County.
5 It is not required that we have witnesses. We checked
6 with the rabbi, we also checked with the interfaith
7 minister, as well as with the county clerk.

8 I'm also happy -- I know that one of the other
9 names that was on the witness list was Ms. Ogle, who
10 was the person who issued the marriage license in Edgar
11 County, who can testify as to my husband's ability and
12 competency.

13 And then finally, in both my reply and, of
14 course, the document that I guess isn't allowed to be
15 rendered today -- can I take this back?

16 THE COURT: You may.

17 MS. MCDONALD: Okay. I'm sorry I'm so clunky about
18 this. It's just this isn't my bailiwick.

19 See, here, according to the Illinois Civil
20 Code, it says, "that specifically prohibits a court
21 from declaring a marriage invalid based upon a party's
22 lack of capacity to consent when one of the other
23 parties to the marriage is deceased."

24 The guardianship ended also at the time of my

1 husband's death, and it was also being challenged.

2 That's all I have to say, Your Honor. I don't
3 mean any disrespect.

4 THE COURT: All right.

5 MS. MCDONALD: I just -- this is beyond my scope of
6 knowledge and so forth.

7 THE COURT: Reply?

8 MR. KINNALLY: Judge, I think this is a pretty
9 serious issue. Number one, they have not provided the
10 Court with any documentation -- excuse me -- any case
11 law that indicates the cases that we have cited are
12 incorrect. They're all Supreme Court cases. They all
13 indicate that an heir, such as a purported spouse,
14 cannot testify because of The Dead Man's Act. It's
15 because there is no case law that contravenes it.

16 But more importantly, the document that
17 Mr. Bement produced, or Ms. McDonald produced and he
18 signed, is a serious affront to the Court because
19 clearly in his deposition, if you look at my reply, you
20 will see that he unequivocally says that the marriage
21 ceremony was conducted in Piatt County. It's Page 66.
22 He unequivocally testifies that no witnesses to the
23 marriage ceremony he conducted in Piatt County were
24 available. There were no witnesses. That's Exhibit 2,

1 Page 60 and Pages 63 and 64.

2 The affidavit that was submitted by
3 Ms. McDonald I believe was created by her. I don't
4 believe that the affidavit is truthful. I think it's
5 perjurious -- either his deposition is or the affidavit
6 is -- and it's a fraud on the Court if it's not
7 perjury. Clearly, this is not just an issue of
8 credibility, Judge. This is an issue of testimony that
9 was adduced by me from Mr. Bement in my office at a
10 deposition under subpoena on July 3, 2019, and the
11 affidavit attempts to contravene what was done under
12 oath, and witnesses can't do that, Judge. Thank you.

13 THE COURT: What is the relief you're seeking, to
14 strike the affidavit, to bar the witness, to bar part
15 of the witness?

16 MR. KINNALLY: Well, I would assume the Court will
17 deal with that when we -- if and when he shows up.

18 What I'm seeking with this particular motion
19 is two things: One, to prevent Ms. McDonald from
20 testifying, and two, to alert the Court that the
21 affidavit that was filed in this case by her and
22 apparently in conjunction with Mr. Bement, clearly is
23 at odds with the testimony that he gave before a
24 licensed court reporter in the State of Illinois.

1 So he can't have it both ways, and I guess we'll deal
2 with that when we -- when he shows up, if and when he
3 shows up. I don't want to prejudge that or preadvocate
4 that.

5 So today all I'm asking is that she be barred
6 from testifying because they don't have any -- you
7 know, they don't have any basis to say that the case
8 law that I have given you is incorrect. These are
9 Illinois Supreme court cases.

10 THE COURT: So there is a motion in limine to bar
11 the purported spouse from testifying because of case
12 law. The response to the motion in limine to bar
13 brings up Mr. Bement's affidavit and his conducting of
14 a marriage ceremony, and the reply says that that is
15 contradicting or contradictory of what he testified to
16 in his deposition so that it shouldn't be considered or
17 it should be -- or there should be some relief at
18 trial.

19 So to the extent that the spouse is going to
20 testify as to the purported marriage and the Illinois
21 law says that the spouse cannot testify as to heirship,
22 and there's cases cited, and they weren't responded to
23 other than by Mr. Bement, I would have to grant the
24 motion in limine based on the law that you can't

1 testify.

2 Now, there are other issues that I think that
3 you're bringing in. I'm not sure if they are all
4 related to the marriage validity or the marriage
5 ceremony to put you in the position to testify, but I
6 believe that the motion in limine is talking about you
7 testifying about heirship, that you are the spouse
8 coming in and asserting that there was a marriage
9 ceremony and that it was valid.

10 And since there was no answer to those cases,
11 at this point I don't know what else to do other than
12 to grant the motion in limine to bar the spouse from
13 testifying.

14 And Mr. Bement, as far as his affidavit, as
15 far as him testifying as to a ceremony, wherever it
16 was, I think the relief will be at trial in that he can
17 be cross-examined or impeached as to his testimony and
18 his credibility by the variance between his affidavit
19 and what he testified to under oath at a deposition.

20 And as to the affidavit itself, responding to
21 the motion, it doesn't do anything for me. I'm
22 agreeing with the administrator as to the motion in
23 limine. It doesn't respond to the actual motion in
24 limine as to a spouse testifying or purported spouse

1 testifying.

2 MS. MCDONALD: Actually, it did.

3 THE COURT: So I know you disagree, and I know you
4 have your right to disagree and your right to appeal.
5 We are not at that stage yet. We're not -- we still
6 have a hearing scheduled on Monday, and at that point
7 we proceed with the petition to have yourself appointed
8 as an administrator, Ms. McDonald.

9 MR. KINNALLY: Judge --

10 MS. MCDONALD: Is there ever --

11 MR. KINNALLY: I'm sorry. Go ahead.

12 MS. MCDONALD: Go ahead.

13 MR. KINNALLY: What time are you going to start,
14 Judge?

15 THE COURT: I believe it's scheduled for --

16 MS. GOSSELIN: I believe 9:00.

17 THE COURT: It's on Monday?

18 MS. MCDONALD: Yes, sir.

19 MS. GOSSELIN: Yes, Monday.

20 MR. KINNALLY: I think we have three days.

21 THE COURT: It is at 9:00, and it's set for Monday,
22 Tuesday, and Wednesday. We may come in a little later
23 on those days.

24 And then are there -- is there a motion in

1 limine that I have not ruled on that is filed by
2 Ellizzette McDonald?

3 MS. MCDONALD: Yes, the one that was filed this
4 morning.

5 MR. KINNALLY: I don't know what that is. That's
6 too late.

7 MS. MCDONALD: Am I allowed to just say something
8 without all of the -- just being very matter of fact --

9 THE COURT: Go ahead.

10 MS. MCDONALD: -- because I think it's the easiest
11 for me?

12 I'm not looking to be the administrator. I'm
13 well aware that -- I'm well aware of who my husband
14 would want to oversee his affairs, number one. I want
15 my marriage. I'm not out for any material gain or
16 financial gain or anything. I want my marriage, that's
17 it. They've had my material things, John and ours
18 things, now for over two years. He can have them.
19 He sell them. He can do whatever. He took my
20 husband's life, Your Honor.

21 I'm not here because of that. I'm here out of
22 respect for my husband and his marriage and to have my
23 marriage and my 38 years of a relationship with this
24 man respected.

1 Three days ago my father was declared end of
2 life. I have to prioritize my life. My father has
3 been there for both myself and John, in fact, since
4 1981, my whole life. I belong with my mother, who has
5 cancer, and my father, who could die at any day now,
6 per the doctors. I have come here out of respect for
7 the Court because I was expected to be here.

8 I feel the situation has gotten so far out of
9 hand, the truth will never come out. Instead, it's
10 turned into this erroneous, wrongful, and blatant false
11 mud-slinging.

12 Again, I just want my marriage, Your Honor.
13 I'm not looking for money. I'm not looking for things.
14 He can have the motorcycles, the stolen diamond, all of
15 the accounts. He's already raided everything. He did
16 that well before he started declaring -- trying to
17 declare my husband incompetent. He didn't want my
18 husband to talk about the abuses that they have
19 sustained.

20 I know the real reason this happened, and it's
21 not at all what was said in the Honorable Judge
22 Noverini's court or what has been presented here before
23 you, Your Honor.

24 That's all I want. I don't want to waste the

1 Court's time. I just want my marriage validated, and I
2 want to be able to honor my husband. That's all.
3 That's all I have to say.

4 I'm not an attorney. I can't -- I don't know
5 all these rules. Oh, and by the way, I have spent
6 over two million dollars fighting this. The reason
7 Mr. Lutrey withdrew is because I had -- my last bill
8 was \$80,147. They are outstanding counsel. Those men,
9 Mr. Lutrey, Mr. O'Kelly, and Mr. Katz, the entire law
10 firm represented my husband with dignity and the way in
11 which my husband lived his life, but, of course, they
12 needed to withdraw because I had to come up with that
13 \$80,000. I'm the only person paying for this, and as
14 of the other day, I have, in fact, paid them in full,
15 but it's too late. Well, I don't know, but I believe
16 it's too late for them to re-enter the case. Again,
17 I just want it to be known that I have no complaints
18 about my counsel. I think they were outstanding.
19 That's all.

20 THE COURT: All right. Well, having ruled as to
21 your ability to testify, that makes it difficult for
22 you to prove the validity of the marriage. The
23 marriage may have happened. It may have been valid in
24 your eyes, but we're proceeding under statutes, law,

1 cases, precedent, and rulings on those laws as applied
2 to the facts. So I'm not saying you didn't have a
3 ceremony, but I may -- that may be the effect as it
4 pertains to heirship. It depends what you are able to
5 prove without testifying.

6 And also, I would say -- I mean, I don't know
7 what the relevance is of going back three decades to
8 your previous relationship to whether that ceremony
9 that took place in 2017 for that one day --

10 MS. MCDONALD: I'm just saying --

11 THE COURT: -- is valid. I don't know how it helps
12 to say that you had a relationship going back to the
13 1980s or '90s --

14 MS. MCDONALD: Uh-huh.

15 THE COURT: -- how that helps to convince us under
16 the law and the facts that there was a valid and not a
17 void or voidable marriage in 2017.

18 MS. MCDONALD: My husband --

19 THE COURT: So at any rate --

20 MS. MCDONALD: My husband was not incapacitated.
21 There are people that are able to testify to his mental
22 fitness. We also have -- so in bringing it to current,
23 it's because my husband was of sound mind and capable
24 of knowing and understanding what it was to be married

1 and to make that decision. He was not under any
2 influence of drugs or anything that they have alleged
3 in previous hearings.

4 In reference to the three decades, I'm just
5 saying one of the things that they have alleged is they
6 have alleged everything from the fact that, oh, John
7 and I just met to he didn't know me, and I'm just
8 responding to that, Your Honor.

9 THE COURT: Okay.

10 MS. MCDONALD: But in regard to the law, my husband
11 was of sound mind. He wasn't under any influence or
12 anything of any type of substances. He understood
13 completely and was, in fact, working at a high
14 capacity, which these witnesses can testify to because
15 they were working with him prior to his death in a
16 professional capacity, as well.

17 And we applied for the marriage under the
18 Illinois law, and we were granted the marriage license,
19 and then in keeping with the way John and I had always
20 talked and wanted to, we got married, and we were
21 planning for the September -- the following September,
22 to have a celebration.

23 THE COURT: All right.

24 MS. MCDONALD: And, of course, Mr. Bement can

1 testify to that, and he would also -- I don't -- not
2 to speak for him, but I know he feels strongly that his
3 words have been taken out of context, that they have
4 been misrepresented. He indicated he felt -- well, he
5 would like an opportunity to clarify and speak to the
6 Court and tell Your Honor about what his perceptions
7 were.

8 THE COURT: Are we ready to go? Are you ready to
9 go then on Monday morning at 9:00 with your witnesses?

10 MS. MCDONALD: Um, I would -- to answer your
11 question right now, no. I'm not ready at this moment,
12 Your Honor. I'm telling you the truth. I'm not ready
13 at this moment because of some of those things. I
14 don't want to -- but I do know that's the date, and I'm
15 not looking to -- again, I'm not looking to, um, waste
16 the Court's time.

17 THE COURT: But you are going to be here on Monday
18 then --

19 MS. MCDONALD: Yes, sir.

20 THE COURT: -- to proceed?

21 MS. MCDONALD: Oh, I will be here if I'm expected
22 to be here, Your Honor.

23 THE COURT: All right. Is there anything further
24 before we adjourn for the day?

1 MR. KINNALLY: I would just like to note we have
2 five witnesses under subpoena, and I have indicated
3 to them that they should probably be here Tuesday.
4 I think that would probably -- one of them is a medical
5 physician. Two of them are lawyers. One of them --
6 one of the witnesses is a lay witness, Mike White, who
7 is coming from Marquette, Michigan. So I don't want
8 to -- I just want to let you know that that's when I
9 kind of indicated that they should be here.

10 THE COURT: Well, I imagine that's as good a guess
11 as saying in the afternoon or the next morning, but the
12 petitioner, Ms. McDonald, is the -- her case in chief
13 goes first.

14 MR. KINNALLY: I understand. That's why I just
15 wanted to let you know.

16 THE COURT: That's why you probably put them on for
17 Tuesday, when it's your case in chief.

18 MR. KINNALLY: Okay. I just wanted to let you know
19 their availability, Judge.

20 THE COURT: All right. We'll see you then.
21 You can let them know that that's probably correct,
22 Tuesday.

23 MR. KINNALLY: I just wanted to clarify.

24 THE COURT: We may not have a full day of witnesses

1 on Monday. I don't know. We'll see. Your case may go
2 over into Tuesday, but at least the -- I mean, the
3 petitioner's case will go over into Tuesday, and then
4 the administrator's case would start sometime during
5 Tuesday. Okay. All right.

6 MR. KINNALLY: We'll prepare an order, Judge.

7 THE COURT: All right. Thank you.

8 MS. MCDONALD: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (END OF PROCEEDINGS.)

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1 STATE OF ILLINOIS)
2 COUNTY OF KANE) SS.
3

4 I, Jennifer L. Joyce, Official Court Reporter
5 for the 16th Judicial Circuit of Illinois, do hereby
6 certify that I reported in shorthand all of the
7 proceedings had in the above-entitled cause and that
8 the foregoing Report of Proceedings is a true, correct,
9 and complete transcript of my shorthand notes so taken
10 at the time and place hereinabove set forth.

11
12
13 *Jennifer L. Joyce*

14 -----
15 Jennifer L. Joyce, CSR
16 Official Court Reporter
17 License No. 084-003401
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IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Estate of)
)
JOHN W. MCDONALD, III,) No. 17 P 744
)
Deceased.)

Thomas M. Hartwell
Clerk of the Circuit Court
Kane County, Illinois
9/6/2018 12 09 PM
FILED/IMAGED

MOTION

NOW COMES Shawn McDonald ("Shawn"), Administrator of the Estate of John W. McDonald, III, by and through his attorneys, Kinnally Flaherty Krentz Loran Hodge & Masur PC, and for his Motion states as follows:

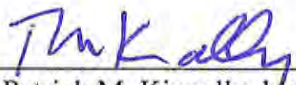
1. The deposition of Ellizzette McDonald occurred on July 25, 2018.
2. During the deposition, it was learned that Ellizzette McDonald has used many names, including Ellizzette Minnicelli, Ellizzette Duvall, Ellizzette Duvall Minnicelli, Ellizzette Duvall McDonald, Lisa Anne Blaydes, Lisa Ann Blaydes, Lisa Blaydes, Ellizzette Blaydes Duvall, Ellizzette A.M. Duvall, Ellizzette Anne Mareen McDonald, Ellizzette Anne Mareen Minnicelli and Ellizzette B. Minnicelli. Copies of various purported identification cards are attached hereto as Exhibit 1. In fact, Ellizzette McDonald, when confronted with her own birth certificate, would not even admit that she was Lisa Anne Blaydes (See Exhibit 2).
3. Additionally, Ellizzette indicated at the time she purportedly married John McDonald she was known as Duvall and was born in Lyon, France. (See Exhibit 3).
4. Also during her deposition, Ms. McDonald indicated she was arrested in New York, but could not remember the details. It is believed at that time she was representing herself to be a physician, which she is not.

5. The identity of Ellizzette McDonald needs to be established.

Accordingly, the Administrator, Shawn McDonald, by counsel, requests that Ms. McDonald be fingerprinted so that her true identity can be established.

Respectfully submitted,

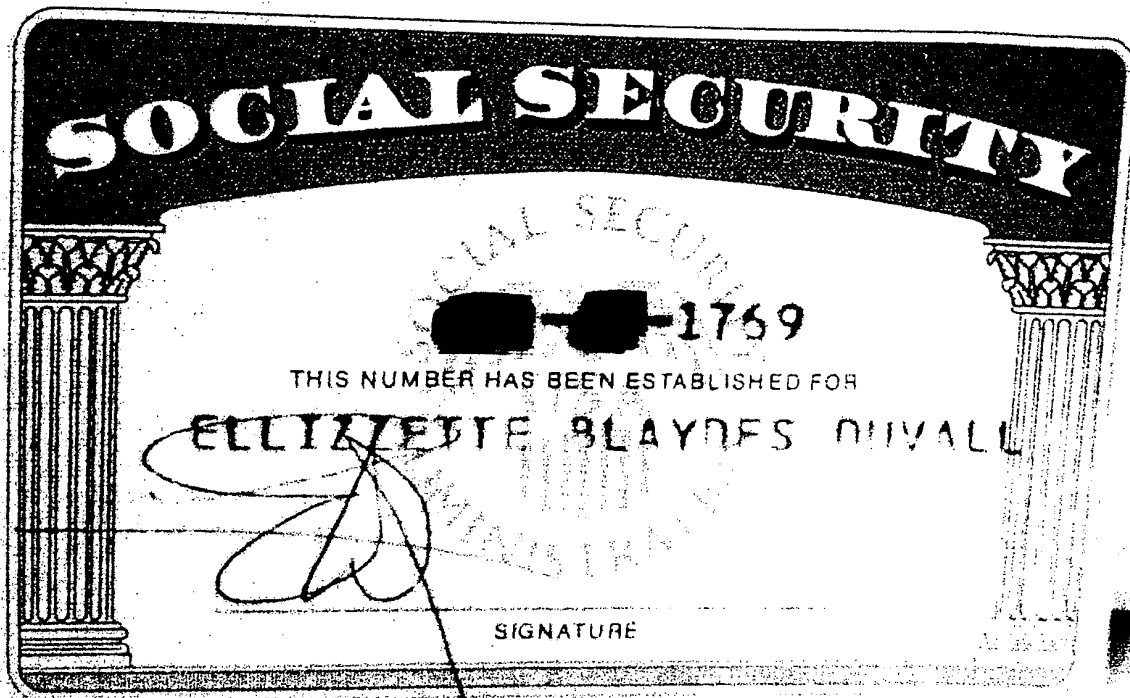
SHAWN McDONALD

By: 
Patrick M. Kinnally, his attorney
Signed Pursuant to Illinois SCR 137

Patrick M. Kinnally (3126201)
Kinnally Flaherty Krentz Loran
Hodge & Masur PC
2114 Deerpath Road
Aurora, IL, 60506
Phone: 630-907-0909
Fax: 630-907-0913
Email: Pkinnally@kfkllaw.com

EXHIBIT 1

SOCIAL SECURITY
ACCOUNT NUMBER
[REDACTED] - [REDACTED] - 1769
HAS BEEN ESTABLISHED FOR
Ellizzette A.M. Duvall
SIGNATURE *Ellizzette A.M. Duvall*
FOR SOCIAL SECURITY AND TAX PURPOSES - NOT FOR IDENTIFICATION



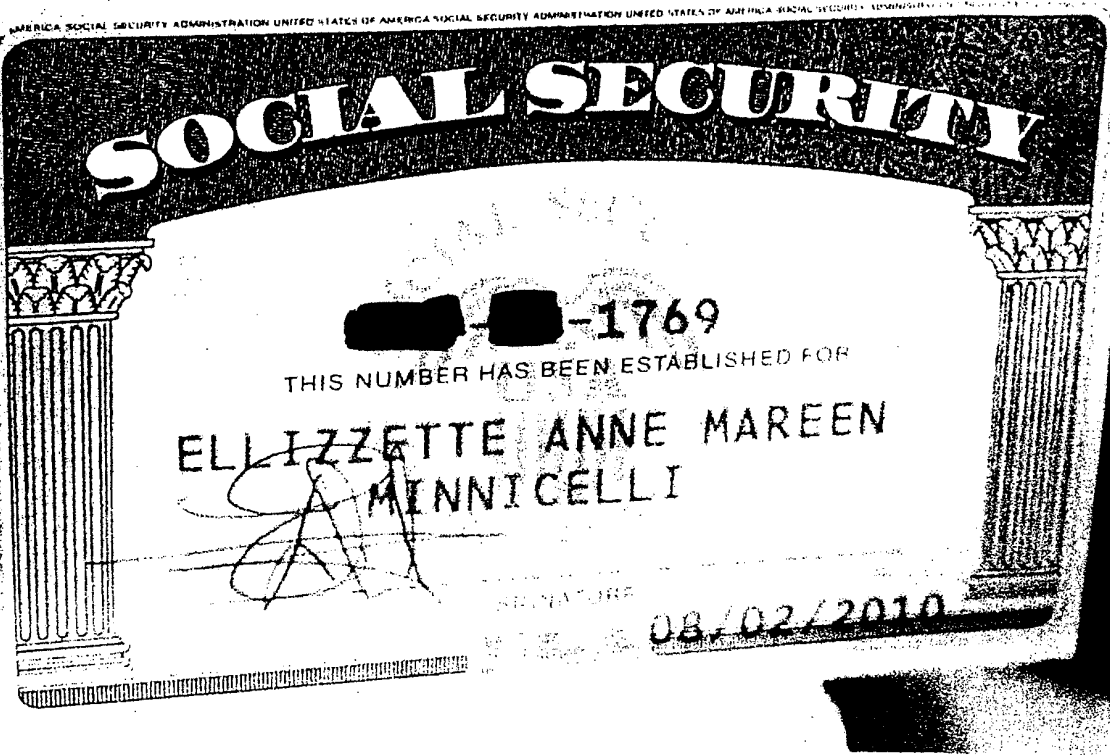
*Entregue al Ayudante de Elecciones en su mesa
la Papeleta de Votar en la pared antes de hacer la línea*

SOCIAL SECURITY

██████████-██████████-1769

THIS NUMBER HAS BEEN ESTABLISHED FOR
**ELLIZZETTE ANNE MAREEN
MCDONALD**

SIGNATURE _____
09/08/2017



ILLINOIS

Jesse White Secretary of State

DRIVER'S LICENSE



SEX: F

DOB: 03-21-63

EXPIRES: 03-21-18

ISSUE: 04-25-13

ELIZZETTE DUVALL
MINNICELLI
7 LAKEWOOD DR
PERIS IL 61944

03-21-63

EXPIRES 04 13 18

ILLINOIS

Jesse White • Secretary of State

DRIVER'S LICENSE



1 LIC NO: [REDACTED] -3683

3 DOB: 03/21/1963

10 EXP: 03/21/2018

07-18-2017

1 MCDONALD
2 ELIZABETH DUVAL
3 9 LAKEWOOD BR
4 PARIS IL 61844

9 SEX: D 10 EYES: NONE
12 HAIR: NONE

15 SEX: D 16 HGT: 5-04"
17 HAIR: NONE 18 EYES: BLUE 19 TYPE: REG
20 DL 201507-20180301

Interim card

medicare



I ELLIZZETTE B MINNICELLI

VALID TO 24/07/13

Driver Licence

New South Wales, Australia

Ellizette Blaydes DUVALL

Card Number

UNIT 45
13 OATLEY RD
PADDINGTON NSW 2021

Licence No.

1 [REDACTED]

Licence Class

C



Ellizette Blaydes DUVALL

Date of Birth
21 MAR 1963

Expiry Date
25 JUN 2012

EXHIBIT 2

STATE OF ILLINOIS
County of Cook)

DAVID ORR, County Clerk

May 10, 2018

I, David Orr, County Clerk of the County of Cook, in the State aforesaid, and Keeper of the Records and files of said County do hereby certify that the attached is the true and correct copy of the original Record on file, all of which appears from the records and files in my office. IN WITNESS THEREOF, I have hereunto set my hand and affixed the Seal of the County of Cook, at my office in the City of Chicago, in said County.

MATCHING I D C

FILL IN THIS FORM WITH TYPEWRITER OR LEGIBLE PRINTING

ORIGINAL

**STATE OF ILLINOIS
CERTIFICATE OF LIVE BIRTH**

1 Place of Birth A State Illinois B. County Cook		2 Usual Residence of Mother (Where does mother live?) A State Illinois B County Cook Lake	
C <input type="checkbox"/> Inside corporate limits and in City, Village, or incorporated Town (Ingleside)		C <input type="checkbox"/> Inside corporate limits and in City, Village, or incorporated Town	
D <input checked="" type="checkbox"/> Outside corporate limits and in Maine Township, or Road District No.		D <input checked="" type="checkbox"/> Outside corporate limits and in Township, or Road District No.	
E Name of Hospital or Institution Holy Family Hospital		E Residence address (Street & No. or R.F.D. and Post Office) 1306 Elm Street	
F If not in hospital or institution, give Street & No. or R.F.D. and Post Office		F. Does mother reside on a farm? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

CHILD	3. Child's Name A (First) Lisa B (Middle) Anne C (Last) Blaydes			4. Sex Female
	5A This Birth was Single <input checked="" type="checkbox"/> Twin <input type="checkbox"/> Triplet <input type="checkbox"/> Quad <input type="checkbox"/> 1st <input type="checkbox"/> 2nd <input type="checkbox"/> 3rd <input type="checkbox"/> 4th <input type="checkbox"/>	5B If Multiple, Child Born	6 Date: Hour (Month) (Day) (Year) of Birth 11 P. M. March 21, 1963	
FATHER	7 Father's Full Name A (First) Buddy B (Middle) Roy C (Last) Blaydes			8 His Race White
	9 His Age 26 Years	10 His Birthplace (City and State or Country) North Salem, Indiana	11A His Usual Occupation State Policeman	11B Kind of Business or Industry District #5
MOTHER	12 Mother's Full Maiden Name A (First) Karen B (Middle) Norine C (Last) Schulz			13 Her Race White
	14 Her Age 20 Years	15 Her Birthplace (City and State or Country) Chicago, Illinois	16 Mother's Mailing Address 1306 Elm Street	
	17 Informant (Signature) <i>Karen Blaydes</i>			18 Informant's Address Ingleside, Illinois

I hereby certify that this child was born alive on the date stated above	18A Signature <i>Frank P. Hesser</i>	18B Attendant at Birth MD <input checked="" type="checkbox"/> DO <input type="checkbox"/> Midwife <input type="checkbox"/> Other (Specify)
	18C Address 494 Leo Street	18D Date Signed 3-21-63
	Des Plaines, Illinois	18E Illinois License Number 36206

17 Received for filing on **3-26-63** 18G Sign
Deanne Peroff

COOK COUNTY DEPT. OF PUBLIC HEALTH - CHICAGO, ILL.
JOHN HALL, M.D. Local Registrar

VS 100-BUREAU OF STATISTICS - ILLINOIS DEPARTMENT OF PUBLIC HEALTH - SPRINGFIELD

EXHIBIT
tabbles 2

5148763



County of Cook
State of Illinois

Office of County Clerk
David Orr

David Orr
DAVID ORR COUNTY CLERK



This copy is not valid unless displaying embossed seals of Cook County and County Clerk signature.

EXHIBIT 3

EDGAR COUNTY, ILLINOIS

CERTIFICATION OF MARRIAGE

GROOM Name: JOHN WOOD MCDONALD, III

Date of Birth: June 6, 1963

Age at Application: 54

Place of Birth: ARCADIA, CA

Parent's Name: JOHN WOOD MCDONALD, JR

Parent's Name: BRENDA KAY WHITE

BRIDE Name: ELLIZZETTE DUVALL MINNICELLI

Last Name at Birth: DUVALL

Date of Birth: March 21, 1964

Age at Application: 53

Place of Birth: LYON, FRANCE

Parent's Name: BLAINE RAY BLAYDES

Parent's Name: KAREN SCHULZ

License Number: M2017-62

Officiant Name and Title: RAYMOND CARL BEMENT, OFFICIANT

Ceremony Date: July 11, 2017

Ceremony Location: PARIS, IL

Application Date: July 10, 2017

File Date: July 17, 2017

Issue Date: January 22, 2018

EXHIBIT
3

CERTIFIED COPY OF VITAL RECORDS

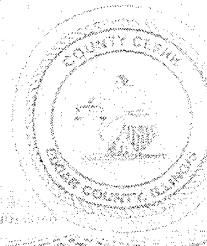
STATE OF ILLINOIS
COUNTY OF EDGAR

DATE ISSUED: *January 22, 2018*

[Signature]
AUGUST H. GRIFFIN
COUNTY CLERK

This is to certify that this is a true and correct abstract or copy of the original record which is on file in the office of the County Clerk, Edgar County, Illinois.

Not valid without the endorsement of higher County.



**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

Case No. 17 P. 744

Estate of: <u>John W. McDonald III</u> Plaintiff(s)	Defendant(s)	<div style="border: 1px solid black; padding: 5px; margin: 0 auto; width: 80%;"> <p><i>James M. Hartnett</i> Clerk of the Circuit Court Kane County, IL</p> <p>MAY - 1 2019</p> <p>FILED 043 ENTERED _____</p> </div> <p align="center">File Stamp</p>	
<u>P. Kinwally</u> <u>G. Gosselin</u> Plaintiff(s) Atty.	<u>O'Kelly</u> Defendant(s) Atty.		
Judge <u>Murphy</u>	Court Reporter		Deputy Clerk
<input type="checkbox"/> A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent <input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			

ORDER

This matter coming on for hearing as pending matters, the Court having heard the testimony of the witnesses and argument of counsel and attorneys being fully advised in the premises it is hereby
ORDERED:

1) That within 48 hours Elizabeth D. McDonald shall present herself for finger-printing at the Kane County Jail at the booking/intake area.

Date: 05/01/19

Yes - Disposal No - Disposal

Judge: *James Murphy*

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

Case No. 17 P 744

Estate of: John W. McDonald III Plaintiff(s)	Elizabeth McDonald Defendant(s)	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <i>Sharon M. Lutz</i> Clerk of the Circuit Court Kane County, IL </div> <p>NOV 18 2019</p> <p>FILED 110 / 110 ENTERED</p> <p align="right">File Stamp</p>	
P. Kinnally G. Gosselin Plaintiff(s) Atty.	Pro Se Defendant(s) Atty.		
Judge Murphy	Court Reporter Grove		Deputy Clerk 110
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			

ORDER

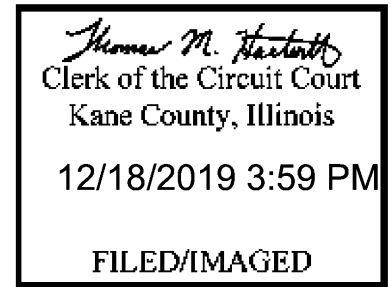
This matter coming on for trial, Elizabeth McDonald having presented her case through testimony of her ~~witnesses~~ witnesses and the court having heard such evidence and upon completion of Elizabeth McDonald's case, Attorney Kinnally having made an oral motion for a directed finding and the court having heard the argument of counsel and Ms. McDonald that Ms. McDonald has failed to make a prima facie case for the existence of a valid marriage with the decedant, the court hereby grants Attorney Kinnally's oral motion for a directed finding. The court further finds there is no just reason to delay enforcement or appeal (S.C.R. 304(a)). This matter is set for case management status on Jan 24 2020 ~~at 9:00 a.m.~~ at 9:00 a.m.

Date: 11/18/19

Yes - Disposal No - Disposal Judge: *[Signature]*

**APPEAL TO THE APPELLATE COURT OF ILLINOIS – SECOND DISTRICT
FROM THE CIRCUIT COURT OF KANE COUNTY**

In The Matter of the Estate Of:)
)
JOHN W. MCDONALD, III.) Case No. 17 P 744
)
Deceased)



NOTICE OF APPEAL

Respondent-appellant Ellizzette McDonald (“Ellizzette”), by her attorneys, Roeder Law Offices LLC, hereby appeals to the Appellate Court of Illinois, Second Judicial District, from the following orders of the circuit court entered in this case:

1. The order of November 18, 2019, granting Shawn McDonald’s oral motion for directed finding that Ellizzette failed to make a prima facie case for the existence of a valid marriage with the decedent and entering a finding of no just reason to delay enforcement or appeal, or both, pursuant to Supreme Court Rule 304(a), and from all orders entered in the procedural progression leading up to that order;

2. All judgment and/or orders entered in the procedural progression leading up to the directed finding entered on November 18, 2019, including but not limited to the order entered September 10, 2018 denying Ellizzette’s Motion for Judgment on the Pleadings.

By this appeal, respondent-appellant Ellizzette McDonald, will ask the Appellate Court of Illinois, Second Judicial District, to reverse and/or vacate the foregoing orders of the circuit court and to otherwise remand this matter to the circuit court for proceedings, and for such other and further relief as the Appellate Court deems necessary, just, and appropriate.

Dated: December 18, 2019

Respectfully submitted,

ELLIZZETTE McDONALD

By: /s/ Steven J. Roeder
One of Her Attorneys

Steven J. Roeder (ARDC No. 6188428)
Thomas D. Gipson (ARDC No. 6326949)
Roeder Law Offices LLC
77 West Washington Street, Suite 2100
Chicago, Illinois 60602
Telephone: (312) 667-6001
Facsimile: (708) 843-0618
sjr@roederlawoffices.com
tdg@roederlawoffices.com

TABLE OF CONTENTS

Common Law Record

Date Filed	Title/Description	Page No.
12/15/2017	New Case Information Sheet filed	C 17-C 18
12/15/2017	Petition	C 19-C 20
12/15/2017	Affidavit of Heirship Filed	C 21-C 22
12/15/2017	Affidavit of Eligibility Filed	C 23
12/19/2017	Order Appointing Administrator Filed	C 24
12/19/2017	Oath and Bond of Representative-Surety Filed	C 25
12/19/2017	Order of Heirship Filed	C 26
12/21/2017	Letter of Administration Duplicate	C 27
12/21/2017	Letter of Administration	C 28
12/22/2017	Petition	C 29-C 31
12/22/2017	Letter of Administration Duplicate	C 32
01/03/2018	Petition	C 33-C 35
01/03/2018	Notice of Hearing Filed	C 36-C 37
01/04/2018	Order Case Transferred to Presiding Judge for Reassignment	C 38
01/04/2018	Appearance Probate	C 39
01/04/2018	Order Transfer Other Judge or Court Filed	C 40
01/04/2018	Motion Petition to Substitute Judge Filed	C 41-C 42
01/04/2018	Order Case Continued for Status	C 43
01/12/2018	Notice of	C 44-C 48
01/16/2018	Certificate of Publication Filed	C 49
01/17/2018	Motion to Vacate Filed	C 50-C 70
01/17/2018	Motion	C 71-C 73
01/17/2018	Motion	C 74-C 94
01/18/2018	Notice of Motion Filed	C 95-C 97
01/18/2018	Motion	C 98-C 100
01/25/2018	Order Case Continued for Status	C 101
01/25/2018	Order Case Continued for Status	C 102
01/30/2018	Notice of Filing Filed	C 103-C 104
01/30/2018	Response to Motion Filed	C 105-C 110
01/31/2018	Motion for Turn Over Order Filed	C 111-C 112
02/01/2018	Response to Petition Filed	C 113-C 116
02/01/2018	Notice of Filing Filed	C 117-C 118
02/01/2018	Response to Petition Filed	C 119-C 123
02/01/2018	Notice of Filing Filed	C 124-C 125
02/01/2018	Notice of Motion Filed	C 126
02/05/2018	Amended Motion to	C 127-C 128
02/06/2018	Reply to Response Filed	C 129-C 133
02/08/2018	Notice of Motion Filed	C 134
02/08/2018	Petition for Restraining Order Filed	C 135-C 140
02/08/2018	Order Deny Motion Petition Request	C 141
02/08/2018	Order Motion Continued	C 142
02/09/2018	Temporary Restraining Order Filed	C 143
02/13/2018	Claim	C 144-C 160
02/14/2018	Claim	C 161-C 177
02/15/2018	Reply to Response Filed	C 178-C 181
02/20/2018	Order Extend Time Filed	C 182
03/05/2018	Motion to Strike Filed	C 183-C 190
03/05/2018	Notice of Filing Filed	C 191-C 192

Date Filed	Title/Description	Page No.
03/07/2018	Notice of	C 193
03/07/2018	Response to	C 194-C 197
03/07/2018	Notice of Motion Filed	C 198-C 199
03/07/2018	Response to	C 200-C 203
03/08/2018	Agreed Order	C 204
03/14/2018	Appearance Filed	C 205
03/14/2018	Notice of Filing Filed	C 206
03/15/2018	Motion	C 207
03/21/2018	Notice of Filing Filed	C 208-C 209
03/21/2018	Response Reply in Support of	C 210-C 220
03/29/2018	Notice of Motion Filed	C 221-C 222
03/29/2018	Petition	C 223-C 224
04/05/2018	Notice of Filing Filed	C 225
04/05/2018	Response to Motion Filed	C 226-C 230
04/12/2018	Notice of Filing Filed	C 231-C 232
04/12/2018	Reply	C 233-C 238
04/18/2018	Order Deny Motion Petition Request	C 239
04/18/2018	Order Deny Motion Petition Request	C 240
04/18/2018	Order Grant Motion Petition	C 241
04/19/2018	Notice of Motion Filed	C 242-C 243
04/19/2018	Petition	C 244-C 249
04/19/2018	Motion	C 250-C 252
04/19/2018	Notice of Motion Filed	C 253-C 254
04/23/2018	Notice of	C 255-C 256
04/30/2018	Motion	C 257-C 269
04/30/2018	Notice of Motion Filed	C 270-C 271
04/30/2018	Probate Citation	C 272-C 273
04/30/2018	Appearance Probate	C 274
05/01/2018	Petition	C 275-C 277
05/01/2018	Notice of Filing Filed	C 278-C 279
05/01/2018	Affidavit of Heirship Filed	C 280-C 281
05/02/2018	Order Case Continued for Status	C 282
05/03/2018	Order Citation to Issue	C 283
05/03/2018	Order Directing	C 284
05/14/2018	Notice of Motion Filed	C 285-C 286
05/14/2018	Motion	C 287-C 289
05/15/2018	Return for Hearing	C 290
05/17/2018	Request	C 291-C 294
05/17/2018	Notice of Filing Filed	C 295
05/17/2018	Notice of Filing Filed	C 296
05/25/2018	Response to Petition Filed	C 297-C 301
05/25/2018	Notice of Filing Filed	C 302
06/05/2018	Notice of Filing Filed	C 303-C 304
06/05/2018	Motion to Compel Disclosure Discovery Filed	C 305-C 328
06/05/2018	Response to Motion Filed	C 329-C 336
06/05/2018	Notice of Motion Filed	C 337
06/07/2018	Motion	C 338-C 340
06/07/2018	Notice of Motion Filed	C 341-C 342
06/07/2018	Notice of Filing Filed	C 343-C 344
06/07/2018	Motion for Judgment Filed	C 345-C 376
06/08/2018	Motion	C 377-C 383
06/08/2018	Notice of Motion Filed	C 384-C 388

Date Filed	Title/Description	Page No.
06/08/2018	Notice of Motion Filed	C 389-C 390
06/08/2018	Motion	C 391-C 395
06/08/2018	Notice of Motion Filed	C 396-C 397
06/12/2018	Order Grant	C 398-C 399
06/13/2018	Order Grant Motion Petition	C 400-C 401
06/13/2018	Proof	C 402-C 403
06/14/2018	Petition	C 404-C 425
06/14/2018	Petition	C 426-C 428
06/14/2018	Motion	C 429-C 438
06/14/2018	Notice of Filing Filed	C 439-C 440
06/14/2018	Notice of Motion Filed	C 441-C 442
06/14/2018	Petition	C 443-C 445
06/14/2018	Motion	C 446-C 448
06/15/2018	Claim	C 449
06/21/2018	Notice of Subpoena Duces Tecum	C 450-C 451
06/21/2018	Notice of Discovery Deposition Filed	C 452-C 453
06/21/2018	Subpoena Duces Tecum Certified Mail Filed	C 454-C 456
06/21/2018	Subpoena Deposition Records Certified Mail Filed	C 457
06/21/2018	Proof of Service Filed	C 458-C 459
06/21/2018	Notice of Filing Filed	C 460-C 461
06/22/2018	Order Case Continued for Status	C 462
06/26/2018	Order Pre-Trial Scheduled Filed	C 463
07/03/2018	Answer Response	C 464-C 465
07/03/2018	Notice of Filing Filed	C 466
07/03/2018	Notice of Filing Filed	C 467
07/03/2018	Response to	C 468-C 470
07/03/2018	Notice of Filing Filed	C 471
07/03/2018	Answer Response	C 472-C 473
07/06/2018	Status Order	C 474
07/11/2018	Response to	C 475-C 477
07/11/2018	Notice of Filing Filed	C 478
07/13/2018	Motion to Stay Discovery Filed	C 479-C 483
07/13/2018	Response Reply in Support of	C 484-C 491
07/13/2018	Notice of Filing Filed	C 492-C 493
07/13/2018	Notice of Motion Filed	C 494-C 495
07/16/2018	Reply	C 496-C 503
07/16/2018	Answer Response	C 504-C 511
07/16/2018	Reply	C 512-C 515
07/16/2018	Answer Response	C 516-C 523
07/16/2018	Notice of Filing Filed	C 524-C 525
07/18/2018	Response to Motion Filed	C 526-C 541
07/18/2018	Notice of Filing Filed	C 542
07/19/2018	Order Motion Continued	C 543
07/19/2018	Order for Deposition Filed	C 544
07/20/2018	Motion	C 545-C 565
07/20/2018	Notice of Motion Filed	C 566-C 567
07/25/2018	Notice of Motion Filed	C 568-C 569
07/25/2018	Motion for Sanctions Filed	C 570-C 578
07/25/2018	Motion for Sanctions Filed (Secured)	C 579
07/26/2018	Notice of Motion Filed	C 580-C 581
07/26/2018	Motion	C 582-C 583
07/26/2018	Return for Hearing	C 584

Date Filed	Title/Description	Page No.
08/02/2018	Motion	C 585-C 617
08/02/2018	Notice of Motion Filed	C 618-C 619
08/06/2018	Notice of Filing Filed	C 620
08/06/2018	Motion	C 621-C 629
08/06/2018	Motion (Secured)	C 630
08/07/2018	Notice of Filing Filed	C 631
08/07/2018	Response to Motion Filed	C 632-C 660
08/09/2018	Notice of Filing Filed	C 661-C 662
08/09/2018	Response Reply in Opposition to	C 663-C 666
08/10/2018	Order Case Continued for Status	C 667
08/28/2018	Motion	C 668-C 728
08/28/2018	Proof of Service Filed	C 729-C 730
08/28/2018	Notice of Filing Filed	C 731
09/04/2018	Proof of Mailing Filed	C 732-C 733
09/06/2018	Notice of Motion Filed	C 734-C 735
09/06/2018	Motion	C 736-C 753
09/10/2018	Order Deny Motion Petition Request	C 754
09/18/2018	Order Directing	C 755
09/18/2018	Order for Bench Trial Filed	C 756
09/18/2018	Order Grant Motion Petition Request	C 757
10/02/2018	Notice of Motion Filed	C 758-C 759
10/02/2018	Motion	C 760-C 765
10/10/2018	Request	C 766-C 785
10/11/2018	Motion Petition for Protective Order Filed	C 786-C 789
10/11/2018	Notice of Motion Filed	C 790-C 791
10/16/2018	Status Order	C 792
10/17/2018	Subpoena	C 793-C 795
10/17/2018	Proof of Service Filed	C 796-C 798
10/18/2018	Notice of Filing Filed	C 799-C 801
10/18/2018	Notice of	C 802-C 804
10/22/2018	Motion	C 805-C 808
10/22/2018	Subpoena Deposition Records Issued	C 809-C 811
10/22/2018	Motion	C 812-C 875
10/22/2018	Notice of Motion Filed	C 876-C 877
10/22/2018	Notice of Motion Filed	C 878-C 879
10/22/2018	Notice of Motion Filed	C 880-C 881
10/23/2018	Proof of Service Filed	C 882-C 884
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 885-C 888
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 889-C 893
10/24/2018	Subpoena Duces Tecum Filed	C 894-C 897
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 898-C 902
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 903-C 904
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 905-C 910
10/24/2018	Response to Motion Filed	C 911-C 912
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 913-C 918
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 919-C 926
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 927-C 932
10/24/2018	Notice of Filing Filed	C 933
10/24/2018	Notice of Filing Filed	C 934-C 935
10/24/2018	Response Reply in Opposition to	C 936-C 938
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 939-C 943
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 944-C 949

Date Filed	Title/Description	Page No.
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 950-C 951
10/24/2018	Notice of Filing Filed	C 952
10/24/2018	Subpoena Duces Tecum Filed	C 953-C 958
10/24/2018	Subpoena Duces Tecum Certified Mail Filed	C 959-C 961
10/24/2018	Subpoena Duces Tecum Filed	C 962-C 966
10/25/2018	Order Case Continued for Status	C 967
11/06/2018	Response to Motion Filed	C 968-C 971
11/06/2018	Proof of Service Filed	C 972-C 974
11/06/2018	Notice of Filing Filed	C 975-C 977
11/07/2018	Motion	C 978-C 1004
11/07/2018	Notice of Motion Filed	C 1005-C 1006
11/07/2018	Notice of Motion Filed	C 1007-C 1008
11/08/2018	Response to Motion Filed	C 1009-C 1040
11/08/2018	Notice of Filing Filed	C 1041-C 1042
11/13/2018	Notice of Filing Filed	C 1043
11/13/2018	Notice of Filing Filed	C 1044
11/13/2018	Reply	C 1045-C 1046
11/13/2018	Reply	C 1047-C 1048
11/16/2018	Agreed Order	C 1049
11/20/2018	Agreed Order	C 1050
11/27/2018	Notice of Filing Filed	C 1051-C 1052
11/27/2018	Response Reply in Support of	C 1053-C 1057
11/30/2018	Status Order	C 1058
11/30/2018	Order Case Mgt Conf Long Form Filed	C 1059
12/04/2018	Response to	C 1060-C 1064
12/04/2018	Notice of Filing Filed	C 1065-C 1066
12/11/2018	Proof of Service Filed	C 1067-C 1068
12/11/2018	Notice of Filing Filed	C 1069-C 1070
12/12/2018	Reply	C 1071-C 1078
12/12/2018	Motion to Compel Disclosure Discovery Filed	C 1079-C 1089
12/12/2018	Notice of Filing Filed	C 1090
12/12/2018	Request	C 1091-C 1109
12/12/2018	Notice of Motion Filed	C 1110-C 1111
12/12/2018	Notice of Filing Filed	C 1112
12/13/2018	Subpoena Duces Tecum Filed	C 1113-C 1115
12/13/2018	Subpoena Duces Tecum Filed	C 1116-C 1118
12/13/2018	Subpoena Duces Tecum Filed	C 1119-C 1121
12/13/2018	Subpoena Duces Tecum Filed	C 1122-C 1124
12/13/2018	Subpoena Duces Tecum Filed	C 1125-C 1127
12/13/2018	Subpoena Duces Tecum Filed	C 1128-C 1130
12/13/2018	Notice of Filing Filed	C 1131-C 1132
12/13/2018	Subpoena Duces Tecum Filed	C 1133-C 1135
12/14/2018	Proof of Service Filed	C 1136-C 1137
12/14/2018	Notice of Motion Filed	C 1138-C 1139
12/14/2018	Notice of Filing Filed	C 1140-C 1141
12/14/2018	Motion	C 1142-C 1170
12/18/2018	Subpoena Deposition Records Issued	C 1171-C 1173
12/18/2018	Notice of	C 1174-C 1175
12/18/2018	Petition	C 1176-C 1182
12/20/2018	Return for Hearing	C 1183
12/26/2018	Notice of Filing Filed	C 1184
12/26/2018	Response Reply in Opposition to	C 1185-C 1190

Date Filed	Title/Description	Page No.
01/03/2019	Proof of Service Filed	C 1191-C 1192
01/04/2019	Response to Motion Filed	C 1193-C 1197
01/04/2019	Notice of Filing Filed	C 1198-C 1199
01/04/2019	Notice of Filing Filed	C 1200-C 1201
01/04/2019	Response to Petition Filed	C 1202-C 1227
01/08/2019	Proof of Service Filed	C 1228
01/08/2019	Notice of Filing Filed	C 1229
01/09/2019	Proof of Service Filed	C 1230-C 1231
01/15/2019	Statement Proof Estate Of Claim	C 1232-C 1234
01/17/2019	Notice of Filing Filed	C 1235-C 1236
01/17/2019	Notice of Filing Filed	C 1237
01/17/2019	Response Reply in Support of	C 1238-C 1240
01/17/2019	Reply	C 1241-C 1245
01/18/2019	Reply	C 1246-C 1247
01/18/2019	Notice of Filing Filed	C 1248
01/22/2019	Notice of Filing Filed	C 1249
01/22/2019	Response Reply in Support of	C 1250-C 1256
01/29/2019	Order Grant Motion Petition	C 1257
01/29/2019	Order Case Continued for Status	C 1258
02/05/2019	Motion to Consolidate Filed	C 1259-C 1260
02/05/2019	Notice of Motion Filed	C 1261-C 1262
02/06/2019	Petition	C 1263-C 1296
02/06/2019	Notice of	C 1297-C 1298
02/07/2019	Notice of	C 1299-C 1300
02/07/2019	Notice of Motion Filed	C 1301-C 1302
02/11/2019	Notice of Motion Filed	C 1303-C 1304
02/11/2019	Motion to Compel Disclosure Discovery Filed	C 1305-C 1308
02/11/2019	Notice of Filing Filed	C 1309-C 1310
02/11/2019	Motion	C 1311-C 1312
02/13/2019	Motion	C 1328 V2-C 1367 V2
02/13/2019	Notice of Filing Filed	C 1368 V2
02/14/2019	Motion	C 1369 V2-C 1372 V2
02/14/2019	Petition for Rule to Show Cause Filed	C 1373 V2-C 1375 V2
02/14/2019	Notice of	C 1376 V2-C 1377 V2
02/14/2019	Notice of Motion Filed	C 1378 V2-C 1379 V2
02/15/2019	Return for Hearing	C 1380 V2
02/15/2019	Order Grant Leave To Withdraw as Attorney Filed	C 1381 V2
02/19/2019	Notice of	C 1382 V2-C 1384 V2
02/20/2019	Subpoena Duces Tecum Filed	C 1385 V2-C 1386 V2
03/18/2019	Motion	C 1387 V2-C 1403 V2
03/18/2019	Notice of Motion Filed	C 1404 V2-C 1405 V2
03/19/2019	Order Body Writ to Issue	C 1406 V2
03/19/2019	Notice of Motion Filed	C 1407 V2-C 1408 V2
03/19/2019	Status Order	C 1409 V2-C 1410 V2
03/19/2019	Motion	C 1411 V2
03/19/2019	Notice of Motion Filed	C 1412 V2-C 1413 V2
03/19/2019	Appearance No Fee	C 1414 V2
03/20/2019	Letter of Testamentary - Duplicate Letter	C 1415 V2
03/20/2019	Order Grant	C 1416 V2
03/21/2019	Rule to Show Cause Filed	C 1417 V2
03/22/2019	Proof of Service Filed	C 1418 V2
03/22/2019	Request	C 1419 V2-C 1440 V2

Date Filed	Title/Description	Page No.
03/22/2019	Notice of Filing Filed	C 1441 V2
03/28/2019	Notice of Filing Filed	C 1442 V2
03/28/2019	Request	C 1443 V2-C 1450 V2
04/02/2019	Notice of Filing Filed	C 1451 V2
04/02/2019	Probate Citation	C 1452 V2-C 1453 V2
04/04/2019	Account and Report Filed	C 1454 V2-C 1507 V2
04/04/2019	Notice of Filing Filed	C 1508 V2
04/10/2019	Notice of Filing Filed	C 1509 V2-C 1510 V2
04/10/2019	Appearance Filed	C 1511 V2
04/15/2019	Status Order	C 1512 V2
04/15/2019	Status Order	C 1513 V2
04/22/2019	Notice of Filing Filed	C 1514 V2-C 1515 V2
04/22/2019	Proof of Service Filed	C 1516 V2-C 1517 V2
04/22/2019	Notice of Motion Filed	C 1518 V2-C 1519 V2
04/22/2019	Motion to Continue Filed	C 1520 V2-C 1526 V2
04/22/2019	Response to	C 1527 V2-C 1593 V2
04/23/2019	Notice of Filing Filed	C 1594 V2
04/23/2019	Discovery Filed	C 1595 V2
04/25/2019	Proof of Service Filed	C 1596 V2-C 1597 V2
04/25/2019	Notice of Filing Filed	C 1598 V2-C 1599 V2
04/25/2019	Subpoena Duces Tecum Certified Mail Filed	C 1600 V2-C 1603 V2
04/26/2019	Proof of Service Filed	C 1604 V2-C 1605 V2
04/30/2019	Proof of Service Filed	C 1606 V2-C 1607 V2
05/01/2019	Court Exhibit Sheet Filed	C 1608 V2
05/01/2019	Minute Order Filed	C 1609 V2
05/01/2019	Order Case Continued for Status	C 1610 V2
05/01/2019	Order Case Continued for Status	C 1611 V2
05/01/2019	Order Directing	C 1612 V2
05/08/2019	Notice of Hearing Filed	C 1613 V2
05/08/2019	Petition for Attorneys Fees Filed	C 1614 V2-C 1618 V2
05/08/2019	Proof of Service Filed	C 1619 V2
05/15/2019	Order Judgment for Attorney Filed	C 1620 V2
05/16/2019	Petition	C 1621 V2-C 1622 V2
05/16/2019	Notice of Motion Filed	C 1623 V2-C 1624 V2
05/22/2019	Petition	C 1625 V2-C 1646 V2
05/22/2019	Notice of Motion Filed	C 1647 V2-C 1648 V2
05/23/2019	Motion	C 1649 V2-C 1663 V2
05/23/2019	Motion to Strike Filed	C 1664 V2-C 1673 V2
05/23/2019	Notice of Motion Filed	C 1674 V2-C 1676 V2
05/23/2019	Motion	C 1677 V2-C 1684 V2
05/23/2019	Motion	C 1685 V2-C 1688 V2
05/23/2019	Proof of Service Filed	C 1689 V2-C 1691 V2
05/29/2019	Order Case Continued for Status	C 1692 V2
05/29/2019	Letter of Testamentary - Duplicate Letter	C 1693 V2
05/29/2019	Notice of Filing Filed	C 1694 V2-C 1695 V2
05/29/2019	Proof of Service Filed	C 1696 V2-C 1697 V2
05/30/2019	Subpoena Duces Tecum Filed	C 1698 V2-C 1700 V2
05/30/2019	Subpoena Issued	C 1701 V2-C 1710 V2
05/30/2019	Notice of Filing Filed	C 1711 V2-C 1712 V2
05/30/2019	Notice of	C 1713 V2-C 1714 V2
05/30/2019	Notice of Filing Filed	C 1715 V2-C 1716 V2
05/30/2019	Subpoena Duces Tecum Issued	C 1717 V2-C 1726 V2

Date Filed	Title/Description	Page No.
06/04/2019	Notice of Filing Filed	C 1727 V2-C 1728 V2
06/05/2019	Order Continue For Date Previously Set	C 1729 V2
06/06/2019	Certificate of Mailing Publication Filed	C 1730 V2-C 1731 V2
06/10/2019	Proof of Service Filed	C 1732 V2-C 1733 V2
06/11/2019	Proof of Service Filed	C 1734 V2
06/11/2019	Response to Request Filed	C 1735 V2-C 1738 V2
06/11/2019	Notice of Filing Filed	C 1739 V2
06/11/2019	Notice of Filing Filed	C 1740 V2-C 1741 V2
06/12/2019	Response to Motion Filed	C 1742 V2-C 1743 V2
06/12/2019	Notice of Filing Filed	C 1744 V2
06/12/2019	Response to Motion Filed	C 1745 V2-C 1746 V2
06/12/2019	Notice of Filing Filed	C 1747 V2
06/13/2019	Proof of Service Filed	C 1748 V2
06/26/2019	Motion	C 1749 V2-C 1750 V2
06/26/2019	Notice of Filing Filed	C 1751 V2-C 1752 V2
06/26/2019	Reply	C 1753 V2-C 1770 V2
06/26/2019	Reply	C 1771 V2-C 1772 V2
06/26/2019	Motion Petition to Extend Time Filed	C 1773 V2-C 1774 V2
06/26/2019	Motion Petition to	C 1775 V2-C 1776 V2
06/26/2019	Notice of Motion Filed	C 1777 V2-C 1778 V2
06/27/2019	Motion	C 1779 V2-C 1781 V2
06/27/2019	Notice of Motion Filed	C 1782 V2-C 1783 V2
07/01/2019	Proof of Service Filed	C 1784 V2-C 1785 V2
07/02/2019	Notice of Filing Filed	C 1786 V2-C 1787 V2
07/02/2019	Subpoena	C 1788 V2-C 1790 V2
07/02/2019	Subpoena	C 1791 V2
07/02/2019	Qualified Protective Order Filed	C 1792 V2
07/02/2019	Subpoena	C 1793 V2
07/02/2019	Subpoena	C 1794 V2
07/02/2019	Subpoena	C 1795 V2
07/02/2019	Order Grant	C 1796 V2-C 1797 V2
07/02/2019	Subpoena	C 1798 V2
07/08/2019	Petition	C 1799 V2-C 1800 V2
07/08/2019	Notice of Motion Filed	C 1801 V2-C 1802 V2
07/09/2019	Subpoena Duces Tecum Certified Mail Filed	C 1803 V2-C 1805 V2
07/09/2019	Subpoena Duces Tecum Certified Mail Filed	C 1806 V2-C 1808 V2
07/09/2019	Notice of Filing Filed	C 1809 V2-C 1810 V2
07/11/2019	Notice of Filing Filed	C 1811 V2-C 1812 V2
07/11/2019	Subpoena for Deposition Certified Mail Filed	C 1813 V2
07/12/2019	Subpoena Duces Tecum Certified Mail Filed	C 1814 V2-C 1815 V2
07/15/2019	Disclosure Statement Filed	C 1816 V2-C 1819 V2
07/15/2019	Notice of Filing Filed	C 1820 V2
07/16/2019	Notice of Filing Filed	C 1821 V2-C 1822 V2
07/17/2019	Notice of Deposition Filed	C 1823 V2-C 1825 V2
07/17/2019	Response to	C 1826 V2-C 1835 V2
07/17/2019	Subpoena	C 1836 V2
07/18/2019	Subpoena	C 1837 V2
07/18/2019	Notice of Deposition Filed	C 1838 V2-C 1840 V2
07/18/2019	Subpoena Duces Tecum Filed	C 1841 V2-C 1842 V2
07/19/2019	Order Grant Motion Petition	C 1843 V2
07/19/2019	Order Grant Motion Petition	C 1844 V2
07/25/2019	Subpoena Duces Tecum Returned Found, Served	C 1845 V2-C 1846 V2

Date Filed	Title/Description	Page No.
07/29/2019	Notice of Motion Filed	C 1847 V2-C 1848 V2
07/29/2019	Motion C 1849 V2-C 1855 V2	
07/29/2019	Notice of Motion Filed	C 1856 V2-C 1857 V2
07/29/2019	Notice of Filing Filed	C 1858 V2-C 1859 V2
07/30/2019	Notice of Motion Filed	C 1860 V2-C 1861 V2
07/30/2019	Proof of Service Filed	C 1862 V2-C 1863 V2
07/31/2019	Notice of Deposition Filed	C 1864 V2-C 1866 V2
07/31/2019	Return for Hearing	C 1867 V2
07/31/2019	Notice of Deposition Filed	C 1868 V2-C 1870 V2
08/06/2019	Subpoena Issued	C 1871 V2-C 1872 V2
08/08/2019	Notice of Subpoena Duces Tecum	C 1873 V2-C 1874 V2
08/08/2019	Order to Produce Records Filed	C 1875 V2
08/08/2019	Subpoena Deposition Records Issued	C 1876 V2-C 1881 V2
08/12/2019	Subpoena Duces Tecum Issued	C 1882 V2-C 1883 V2
08/16/2019	Order Case Continued for Status	C 1884 V2
08/19/2019	Copy of Correspondence Filed	C 1885 V2
08/22/2019	Motion	C 1901 V3-C 1936 V3
08/22/2019	Notice of Motion Filed	C 1937 V3-C 1938 V3
08/22/2019	Notice of Filing Filed	C 1939 V3-C 1940 V3
08/23/2019	Notice of Motion Filed	C 1941 V3-C 1942 V3
08/23/2019	Subpoena Issued	C 1943 V3-C 1944 V3
08/23/2019	Motion Petition Request for Admissions Filed	C 1945 V3-C 1952 V3
08/23/2019	Certificate of Service Filed	C 1953 V3
08/23/2019	Motion	C 1954 V3-C 1959 V3
08/23/2019	Request	C 1960 V3-C 1967 V3
08/23/2019	Certificate of Service Filed	C 1968 V3
08/23/2019	Subpoena Duces Tecum Certified Mail Filed	C 1969 V3-C 1970 V3
08/29/2019	Order Case Continued for Status	C 1971 V3
09/10/2019	Notice of Motion Filed	C 1972 V3-C 1973 V3
09/10/2019	Motion	C 1974 V3-C 1977 V3
09/12/2019	Motion Petition to Withdraw as Attorney Filed	C 1978 V3-C 1979 V3
09/12/2019	Notice of Motion Filed	C 1980 V3-C 1981 V3
09/12/2019	Notice of Motion Filed	C 1982 V3-C 1983 V3
09/17/2019	Subpoena Issued	C 1984 V3-C 1985 V3
09/18/2019	Order Grant Leave To Withdraw as Attorney Filed	C 1986 V3
09/18/2019	Notice of	C 1987 V3
09/19/2019	Notice of Filing Filed	C 1988 V3-C 1989 V3
09/19/2019	Response to Motion Filed	C 1990 V3-C 1994 V3
09/23/2019	Subpoena Issued	C 1995 V3-C 1996 V3
09/23/2019	Notice of Filing Filed	C 1997 V3
09/25/2019	Supplemental Disclosure Filed	C 1998 V3-C 2003 V3
09/25/2019	Notice of Filing Filed	C 2004 V3
10/16/2019	Motion in Limine Filed	C 2005 V3-C 2039 V3
10/16/2019	Notice of Motion Filed	C 2040 V3-C 2041 V3
10/23/2019	Order Case Continued for Status	C 2042 V3
10/23/2019	Appearance Filed	C 2043 V3
10/30/2019	Proof of Service Filed	C 2044 V3-C 2051 V3
11/04/2019	Notice of Filing Filed	C 2052 V3
11/04/2019	Reply to Response Filed	C 2053 V3-C 2156 V3
11/13/2019	Proof of Service Filed	C 2157 V3-C 2165 V3
11/13/2019	Order Grant	C 2166 V3
11/18/2019	Order Grant	C 2167 V3

Date Filed	Title/Description	Page No.
11/18/2019	Notice of Motion Filed	C 2168 V3
11/18/2019	Motion	C 2169 V3-C 2171 V3
11/20/2019	Petition for Attorneys Fees Filed	C 2172 V3-C 2196 V3
11/20/2019	Report of Proceedings Filed	C 2197 V3-C 2235 V3
11/20/2019	Notice of	C 2236 V3-C 2237 V3
12/04/2019	Return for Hearing	C 2238 V3
12/12/2019	Order Grant Attorney Fees Filed	C 2239 V3
12/12/2019	Notice of Hearing Filed	C 2240 V3
12/18/2019	Notice of Filing a Notice of Appeal Filed	C 2241 V3-C 2242 V3
12/18/2019	Appeal Notice Filed	C 2243 V3-C 2244 V3